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**EARL AMHERST.**

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**COPY of a DESPATCH, and its Enclosures,  
addressed to Earl Amherst by the Earl of  
Aberdeen, on the 2d April 1835.**

*(Sir George Grey.)*

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*Ordered, by The House of Commons, to be Printed  
22 March 1838.*

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not in TEEMANE

EARL AMHERST.

RETURN to an ADDRESS of the Honourable The House of Commons,  
dated 12 March 1838;—for,

COPY of a DESPATCH, and its Enclosures, addressed to Earl *Amherst* by  
the Earl of *Aberdeen*, on the 2d April 1835.

Colonial-office, Downing-street, }  
15 March 1838. }

G. GREY.

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COPY of a DESPATCH from the Earl of *Aberdeen* to Earl *Amherst*.

(No. 2.)

My Lord,

Downing-street, 2 April 1835.

THE King has been pleased to select your Lordship for a very important service, in the performance of which great judgment and discretion may be requisite. The persuasion that these qualities are possessed by your Lordship in an eminent degree, has induced me to submit your name for His Majesty's gracious approbation.

Earl of Aberdeen  
to Earl Amherst.  
2 April 1835.

It is now my duty to explain to your Lordship the objects of your mission, and to furnish you with such instructions as appear to be the best calculated to lead to their attainment.

I think it unnecessary in this place to enter into any historical review of the rise and progress of the unfortunate differences which for some years have existed between the Province of Lower Canada and the King's Government. The papers already in your hands will afford all the information upon this subject which you can require. It will probably be admitted that throughout the various stages of growing discontent, the Government of the mother country has been constantly animated by a sincere desire to promote the welfare and happiness of the Province; and that the increased degree of acrimonious feeling which now prevails in Canada cannot be attributed to any absence of good-will, or to any neglect on the part of Great Britain.

Notwithstanding the desire entertained by the Legislature of this country, and the successful efforts of my predecessors in the office which I now hold, to improve the general condition, and to carry into effect many substantial reforms in the administration of Lower Canada, I readily acknowledge that there are complaints still unredressed, which may be put forward by the Province, and that these are neither few nor inconsiderable. To meet and to remove all such; to apply a prompt and efficacious remedy to every such grievance; and to effect a permanent adjustment of differences which may prove satisfactory to all reasonable men, is the main object of your mission.

Your Lordship is fully aware of the spirit in which this undertaking has been conceived, and I will not now pause to develop further those principles, with which you are already familiar. The general views and feelings of His Majesty's Government upon this subject will be sufficiently apparent by a reference to the despatch which I have recently addressed to Lord Aylmer, and a copy of which is herewith enclosed.

Enclosure, No. 5.

I will, therefore, proceed at once to deal with the various topics which have been brought under the consideration of His Majesty's Government; I trust, in such a spirit of fairness and conciliation as may insure the successful termination of our endeavours; and if we should ultimately fail, it will at least be a consolation to believe that we shall have deserved the approbation and support of every man of candour and impartiality.

Lord Aberdeen's  
Despatch to Lord  
Aylmer, 14 Feb.  
1835.

In entering upon a subject so comprehensive as the present, I have thought it right to divest your Lordship's instructions as far as possible of the various details, historical and legal, with which the question is necessarily encumbered. Confining myself in this place to those more prominent topics to which your Lordship's attention must be chiefly given, I have embodied in a series of Minutes, which accompany this despatch, all those collateral statements and discussions to which, in the discharge of your mission, you will probably have occasion to refer. This arrangement leaves me free to advance immediately to the consideration of those

Enclosure, No. 1.

Enclosure, No. 2.

Enclosure, No. 3.

Enclosure, No. 4.

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topics upon which, on your arrival in Lower Canada, you must be prepared to act with promptitude and decision.

First in order, and in importance, is the claim which will be preferred by the House of General Assembly to appropriate to the public service, at their discretion, the whole of the revenue of the Province, from whatever resources arising.

It was not on light grounds that preceding Administrations claimed for the Lords of the Treasury the right of applying the duties levied in Lower Canada, under the British Statute of 1774, towards the maintenance of the civil government and the administration of justice in that Province. That construction of the law was supported by every authority, legal and constitutional, to which the question could be referred. Experience, however, satisfactorily proved that such a power could not be advantageously maintained. The attempt involved a controversy with the House of Assembly, in the course of which that branch of the legislature assumed to itself the exercise of the disputed power of appropriation. His Majesty's acquiescence in that pretension was repeatedly made the condition upon which the necessary supplies of the year were granted. Lord Aylmer was thus compelled to sanction, and His Majesty's Government to acquiesce in, a proceeding which had been, in the most unequivocal terms, denounced by the Ministers of the Crown as unlawful. The Earl of Ripon, and the Administration of which he was a member, thought it necessary to terminate a controversy pregnant with such consequences as these. Parliament, therefore, at their suggestion, transferred to the General Assembly the unconditional right of appropriating to the public service of the Province the revenues raised under the Act of 1774.

Lord Ripon appears to have anticipated that this concession would have been met by a corresponding advance on the part of the Assembly towards the adjustment of all questions then in dispute between them and the British Government; and especially, that an adequate provision would have been made to secure the independence of the judges, and of those officers in favour of whom it was not desirable that salaries should be annually granted by a popular and fluctuating body. Those hopes were not fulfilled. The Assembly avowed that the concession already made would not be satisfactory unless followed up by a surrender of the hereditary and territorial revenue vested in His Majesty by his inherent prerogative.

On reviewing the various arguments alleged in support of this further demand, I find many to which, perhaps, it might not be difficult to give a satisfactory answer. But upon a deliberate survey of the question in all its different bearings, the Ministers of the Crown have thought it their duty to advise His Majesty that, subject to the conditions to be noticed in the sequel, these branches of the provincial revenue may be surrendered to the appropriation of the House of Assembly. Convinced that the well-being of his Majesty's subjects inhabiting the Province will, on the whole, be best promoted by this change, His Majesty cheerfully renounces to their representatives the trust which, except with a view to the interest of the Province at large, His Majesty could have no motive for retaining in the hands of officers appointed by himself.

To this demand of the House of Assembly your Lordship will, therefore, accede frankly and without hesitation. But the concession must not be unqualified.

After making the most liberal allowance for the distinctions which must subsist between the government of a province on the continent of North America and the administration of the affairs of this kingdom, there must yet remain some cardinal principles common to both, considered as members of the same empire, and as subject to the same Sovereign. At no period of the history of England has the King of this realm been dependent upon the votes of the House of Commons for the maintenance of those officers for whom at the present time provision is made by the Civil List. No sufficient reason has been alleged why the King should, in this respect, stand towards the House of Assembly in Lower Canada in a relation essentially different from that which His Majesty bears to the House of Commons. It is therefore in strict conformity with the settled maxims and habits of the constitution, that I instruct your Lordship to stipulate for the grant of a moderate and reasonable Civil List, as one of the conditions upon which the proposed transfer of the territorial and hereditary revenues will be made. The amount of the annual sum to be required for fixed services was stated by the Earl of Ripon, in his despatch of the 29th of September 1831, at 5,900*l.*, a sum which it would be impossible to reduce without impairing the efficiency of this branch of the public service. Lord Ripon's estimate, however, did not embrace the judges' salaries. That charge was viewed by his Lordship as the subject of distinct consideration

consideration, and in his despatches connected with it he pressed upon the Provincial Legislature the enactment of such a law as would render the tenure of the judges' offices independent of the Crown, while it exempted them from dependence on the Assembly for an annual grant of their salaries. I adopt, in this respect, the views of my predecessor in office, and advert to the subject in this place, only with a view to the remark, that if it should seem fit to the Assembly to add the amount of the judges' salaries to the proposed Civil List, His Majesty's Government would rejoice to concur with them in giving effect to the consequent arrangements respecting the terms of judicial patents. On the other hand, if the House of Assembly should think proper to exclude from any Civil List Act which might be passed the provisions relating to the maintenance of the judges and their tenure of office, that question may still be reserved for a separate discussion, without prejudice to the settlement of the demands to be made in favour of the Governor and the other officers of the Crown, who are to be embraced in the proposed Civil List. It must, however, be distinctly understood, that until an adequate provision be made for the maintenance of the judges, His Majesty cannot divest himself of the only funds within his reach available for that most important purpose.

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The Earl of Ripon's suggestion proceeding on the assumption that His Majesty would retain a perfect control over the hereditary and territorial revenue, contained no estimate for various expenses, which, though from their fluctuating nature they must be referred to the head of contingencies, are yet inevitable, and are not less essential to the free exercise of the functions of the Governor, than are the fixed salaries of himself and the few other public officers for whom it is designed to provide. The proposed Civil List must therefore contain the annual assignment of a sum of money adequate for these purposes. I refer to your Lordship, aided by the information which you will receive in the Province itself, the determination of the precise sum to be required under this head.

It will probably be objected to a permanent grant for indefinite purposes, that the effect will be to withdraw that part of the public expenditure, not only from the control, but even from the cognizance of the representatives of the people. Your Lordship will anticipate that difficulty by proposing that an account should be annually rendered, in detail, to the House of Assembly, of the purposes to which the Governor had appropriated every part of the fund placed at his disposal, under the head of contingencies. The opportunity of suggesting any practicable reductions in this charge will thus never be wanting to them; nor is it credible that, after such a settlement, there would exist any undue reluctance on the part of the Government to give effect to any such suggestions.

A further condition is to be noticed, which may, perhaps, still more completely allay any anxiety respecting the excess or misapplication of the contingent fund. I propose that the duration of the whole arrangement should, in the first instance, be limited to seven years; at the expiration of which the consideration of the question might be resumed with all the advantages derived from the experience which would then have been acquired, and the scheme might be better adapted to new exigencies, which, in the lapse of such a period, would have probably arisen.

The revenue to be ceded has already been charged by the Crown with certain pensions and other annual outgoings, for the punctual payment of which His Majesty's faith is pledged. No demand is made on the liberality of the House of Assembly for the means of rewarding meritorious public services in future. With the termination of the lives of the present grantees accessions would thus be progressively made to the fund at the disposal of the House of Assembly, until at length it would be cleared of every charge, excepting those which I have proposed that it should permanently bear. But His Majesty's Government are bound by considerations which admit of no compromise or hesitation, to stipulate, as the indispensable condition upon which the hereditary and territorial revenue is surrendered, that the legal rights of all the present pensioners and grantees should be respected and maintained in their integrity. In the accompanying Minutes your Lordship will find an exact statement of the amount of those charges, drawn out in the utmost practicable detail. I am persuaded that the House of Assembly will be not less firmly opposed than His Majesty's Ministers themselves to any measure by which the pledged faith of the King's Government might be justly impugned, or which would weaken the foundations upon which the security of all proprietary titles, and indeed of all civil rights, must ultimately repose.

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In the accompanying Minutes your Lordship will find a complete statement of all the sources from which the hereditary and territorial revenues of the Crown in Lower Canada are derived, with the average annual produce of each, as far as the materials for such an account exist in this kingdom. After verifying, and, if necessary, correcting this statement, by the aid of the more exact information to be obtained in the Province itself, your Lordship will communicate the result to the House of Assembly, in order that they may have before them the most copious explanation of the effect which the intended arrangement will produce upon the financial interests of the Province.

The accounts thus to be produced will show that of the funds to be surrendered to the House of Assembly a very large proportion results from the proceeds of the Royal demesne: including under that term the wild land of the Province, as well as the settled and inhabited districts, of which His Majesty is possessed in right of the Crown. It cannot be too distinctly understood, or too clearly stated, that in transferring to the representatives of the people the appropriation of the annual income arising from this property, His Majesty does not abandon the right of managing and of disposing of the land itself, in such manner as he may be advised may be most conducive to the settlement and general welfare of that part of His Majesty's dominions. This is indeed the inherent right, or, as it might be more accurately expressed, the inalienable duty, of the Executive Government. There exist no public functionaries independent of His Majesty to whom such a trust could be properly confided. The abandonment of this branch of the Royal prerogative to the House of Assembly would destroy the whole balance of the Provincial Government. It is no failure of respect to that body to observe, that their virtual irresponsibility disqualifies them for the discharge of a duty, for the faithful and impartial performance of which the immediate agents ought to be held strictly accountable. The principle which excludes the popular branch of the Legislature from all administrative functions, rests on motives too obvious to require explanation, and too conclusive to be made the subject of debate. In fact, there is no country possessing free institutions in which this fundamental maxim does not obtain; nor can the King forego, in Lower Canada, the exercise of a power, which, for the benefit of his subjects at large, is vested in His Majesty throughout every other part of the British dominions, European as well as Foreign.

It will probably be objected, that past experience has shown the necessity of devising an effective control against the abuse of this power by officers invested with His Majesty's delegated authority. Exempt, as I am, from every desire to overstate the just claims of the Crown on this subject, and feeling that this is a discussion to the right conduct of which perfect frankness is indispensable, I have no scruple in subscribing to the accuracy of that statement. I very deeply regret the improvidence with which so many valuable districts in Lower Canada were in former times alienated in favour of persons who had no just claim to such favour. I must, however, on behalf of preceding Administrations, assert, that their error was the result, in great measure at least, of misconceptions, which very widely prevailed, respecting the principles on which the settlement of an uncleared territory could be most advantageously conducted. It is due to the Earl of Ripon to state, that to him is to be attributed the distinct perception of the fallacy which had led others to sanction gratuitous donations of land, in the hope of expediting the settlement and speedy occupation of the country. To him also is to be ascribed the effective practical measures adopted to prevent the continuance of that ill-judged practice. The rules which Lord Ripon laid down for preventing the alienation of any part of the wild lands of Lower Canada, except at a fair minimum price, and after an open and impartial competition at public auction, appear to myself perfectly well adapted to prevent the recurrence of any of those abuses which the House of Assembly will probably object to the past management of these lands by the Crown. His Lordship invited that House to assist him by any suggestions which they could offer for the improvement of his plan. Hitherto no such advice has been received from them. Your Lordship will renew the invitation, with the assurance that it will be weighed with the deference so justly due to the opinions of the representatives of the people of Lower Canada on such a subject: nor will you refuse your assent to any Bill which may be tendered to you, if otherwise unobjectionable, for preventing the deviation of the Governor himself, or of any other officer acting under His Majesty's authority, from the principles of Lord Ripon's regulations.

The management of the Crown lands will necessarily involve a considerable expenditure,

expenditure, which, from its nature, is incapable of being made the subject of a previous estimate with any reasonable certainty. It is, therefore, to be understood that the territorial revenue to be placed at the disposal of the House of Assembly is not the gross income, but the net receipt, after the necessary and reasonable deductions shall have been made for the expenses of management and collection. To obviate the jealousy which may be felt respecting the probable amount of this charge, your Lordship will pledge His Majesty's Government, not only to maintain the utmost practicable economy, and the most vigilant superintendence over all subordinate officers employed in this service, but also to lay before the Assembly, from year to year, an account, in the most complete detail, of every part of this expenditure, and to receive with the utmost respect and attention any suggestions which that House may think fit to offer, for the reduction of that charge, or for improving the system of land administration.

I will not pass over in silence a further objection which will probably be raised by the House of Assembly to the proposed arrangements respecting the management of the wild lands. I anticipate the revival of the complaints which have already been made respecting the establishment of the British North American Land Company, and the remark, that by creating institutions of that nature, His Majesty's Government do virtually transfer to private and irresponsible persons that duty which is claimed for the Crown as incident to the Royal prerogative. Without pausing to repel this remark so far as I think it really susceptible of an answer, it is more satisfactory to say that your Lordship has distinct authority to pledge His Majesty not to incorporate any body of persons in future, for the purchase and settlement of wild lands in Lower Canada, until the intention shall have been communicated to the Legislative Council and Assembly, and ample opportunity shall have been given to those bodies to urge any objections which they may entertain to the grant of such a charter. The existing charter rests upon a legal, and therefore an unassailable foundation. It creates vested rights, which it is the indispensable duty of His Majesty's Ministers to respect and to maintain. Although, therefore, the company itself cannot be dissolved, and their territory cannot be taken from them, your Lordship will distinctly understand, and will communicate to the House of Assembly, that the proceeds of the payments to be made by the company to the Crown, will constitute a part of that territorial revenue which it is proposed ultimately to surrender to their appropriation.

I will not yield myself to the apprehensions that the settlement which I have thus proposed of these pecuniary questions will be rejected by the House of Assembly. They are conceived in the spirit of conciliation and respect, and will, I trust, be welcomed in the same temper. It is necessary, however, to contemplate the opposite contingency. Your Lordship will, therefore, understand that you have not authority to recede from any of the fundamental principles which I have laid down for your guidance. If, without compromising them, the plan can be so modified as to render it more acceptable to the House of Assembly, I do not fetter your Lordship's discretion to adopt and sanction any such changes. But from the basis itself your Lordship will not depart, except with the direct previous sanction of His Majesty. It is not probable that the King would authorize you to recede in principle from the terms which I have thus proposed, except after a communication to both Houses of Parliament, and with their concurrence.

I am the less disposed to authorize any departure from the general principles thus laid down for your Lordship's guidance, because the application of them will necessarily extend beyond the limits of Lower Canada. The concessions which His Majesty makes on this occasion, though suggested by the representations which have reached the Throne from that Province, are not yielded with reluctance, or on the pressure of mere importunity, but from a mature conviction that the time has arrived when they may be made with advantage to the empire at large. The other British North American provinces will partake of the benefits of the arrangement. It is gratifying to His Majesty to anticipate in Upper Canada, in Nova Scotia, New Brunswick, and Prince Edward's Island, the probable wishes of the representatives of the people, and to transfer to the respective Houses of General Assembly, though unsolicited by them, a power which, His Majesty is assured, they will employ for the general welfare of their constituents. A measure thus comprehensive must, of course, be consistent with itself, and must rest upon the same basis in all the different provinces to which it will be extended.

The preceding instructions afford sufficient proof of His Majesty's anxious desire to make to the House of Assembly of Lower Canada every concession not at vari-

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ance with the essential principles of the monarchical constitution of the Province. Beyond that limit His Majesty cannot be advised to advance; nor will I, on any light grounds, conclude that it is the deliberate wish of the representatives of the Canadian people to urge their pretensions farther. To the support of that system of government, which was established by the Parliamentary Charter of 1791, the most sacred pledges have been given, not merely by His Majesty's representatives and by the various executive officers of the Crown in Lower Canada, but by all public functionaries and the great body of His Majesty's subjects inhabiting that Province. The demand which has been made for convoking electoral meetings in all the districts of the country, to deliberate on the innovations which it may be expedient to make in the established form of government, I am therefore willing to refer rather to the excitement of popular debate than to the settled wishes of any considerable body of persons. If your Lordship should learn that I am mistaken in this supposition, and if such a pretension should be seriously advanced, you will meet it by the most unequivocal declaration, that His Majesty's Government will participate in no such project. Appeals to popular conventions can have no place in the British Constitution, whether as existing in this kingdom, or as modified by any colonial laws. They are foreign to the whole spirit of our government. They are equally destitute of plausibility in theory, and of substantial advantage in practice. The irresistible authority of public opinion, when deliberately maintained and distinctly expressed, no one will dispute; but that opinion is not to be collected from the resolves of meetings which, from the nature of the case, must be under such a control as to deprive the assembled multitude of all means of serious inquiry and free action.

The project of what have been termed primary meetings is avowedly entertained, in order to prepare the way for rendering the Legislative Council an elective body. To that change also, in whatever form it may be urged upon your Lordship's notice, it will be your duty to announce the settled opposition of His Majesty's Government. They adhere to the Constitutional Act of 1791. They believe it to be a system of government, not of course incapable of improvement, but well adapted in all its fundamental principles to promote the wellbeing of the people of Canada. The Ministers of the Crown do not believe that a council chosen by the constituency of the House of Assembly would adequately represent the interests or convey the opinions of the collective society of the Province in all its different branches. They doubt not that the proposed change would induce the necessity for other innovations, which as they are unnoticed, so they cannot be contemplated, by the House of General Assembly. To so complete a revolution in the system of provincial government it is impossible that the King should be advised to give his sanction. The entire abolition of the Legislative Council would in its early and inevitable consequences, be a less abrupt invasion of those principles which form the basis of the existing constitution.

Your Lordship will, however, entertain any proposal which may be made to you for improving the character and increasing the weight and independence of the Legislative Council. It may be perfectly fit to limit strictly the number of persons holding offices at the pleasure of the Crown who should be competent to sit and vote in that body. I am not prepared absolutely to deny that even the total exclusion of all such officers might, under the peculiar circumstances of the case, be expedient, although that is a conclusion which I should be slow and reluctant to adopt. The establishment of such a qualification as would ascertain that every member had a large and permanent interest in the soil of Lower Canada appears to me a desirable measure. Some restriction, perhaps, on the augmentation of the number of councillors, and the exclusion of men of unripe years from any share in its deliberations, might probably tend to check some of the abuses to which such an institution is more particularly obnoxious. By a judicious choice from the gentlemen of the country of some new councillors, additional confidence and respect might be won for the Legislative Council, as at present constituted. I do not dwell at greater length on these suggestions, because the adoption of them would presuppose a more intimate acquaintance than I can venture to claim with the actual state of society, and with the internal affairs of the Province. I would refer them to your Lordship for your more mature inquiry and reflection. Such proposals, if they shall answer no other practical purpose, may at least serve to illustrate the disposition which His Majesty's Government entertain to promote any amendments in the composition of the Legislative Council of Lower Canada not involving a sacrifice of the right of the King to nominate the members.

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The topics to which I have already adverted are those to which far more interest attaches than to any other connected with the recent discussions in Lower Canada. Referring your Lordship to the Minutes already mentioned for an explanation of my views upon many subordinate questions, I will briefly review in this place those which appear to invite a more particular notice.

I have no terms more distinct and emphatic than those employed in Lord Ripon's despatches with which to express my own conviction, that upon questions properly belonging to the cognizance of the Provincial Legislature, Parliament ought not to interfere, except at the bidding of the most evident necessity, and with a strict adherence to the limits within which that necessity may operate. I therefore have no wish that any single enactment should be retained in the British statute book respecting the tenure of land in Canada. The motives which induced Parliament, in the year 1791, to interpose on the subject of the conditions on which newly granted lands should be holden, and the motives which led to a Parliamentary interpretation of that enactment in the year 1825, if erroneous, were at least considerate, and indicative of an earnest desire to promote the welfare of the Province. The transfer to the Legislature of Lower Canada, in 1831, of the power to repeal or modify the previous Statutes at their discretion, was unquestionably dictated by the wish to testify the highest respect for their exclusive right to regulate the internal affairs of their constituents. If, as I have reason to suppose, it should be maintained that the last of these Acts does not impart to the Canadian Legislature the necessary powers in terms sufficiently ample, the Ministers of the Crown will cheerfully introduce into Parliament any Bill which may be necessary for the extension of those powers. If, on the other hand, the local Legislature concur with myself in thinking that their authority on this subject is altogether unfettered, and if, in pursuance of that opinion, they should proceed to pass any Acts for the settlement of the question respecting the tenures of land, your Lordship will cordially co-operate with them in that work. Or, finally, if the Council and Assembly should desire the repeal by Parliament of the whole, or of any particular part of the British Statutes on this subject, your Lordship will, on behalf of His Majesty's Government, engage that the necessary measures shall be promptly taken for obtaining such a repeal. It is always, of course, to be understood that the Ministers of the Crown cannot be accessory to any such alteration of the existing law as should defeat the vested rights, or destroy the reasonable and legitimate expectations, of any company or individual to any land in the Province. In the same spirit, and in pursuance of the same principle, your Lordship will give the most distinct pledge that the Ministers of the Crown will recommend to Parliament the enactment of a law repealing the whole or any part of the Canada Trade Act, 3 Geo. 4, c. 119, for the repeal of which the Legislatures both of Lower and Upper Canada may prefer a joint address to your Lordship. As the two Provinces have a common, and not a very unequal interest in the revenue distributed between them under that Statute, it is obvious that His Majesty's Government could not properly act on the subject except with the concurrence of both.

Your Lordship will direct your careful attention to the means which may be most effectually taken for improving the constitution of the legal tribunals of the Province; for increasing method, economy, and despatch in the administration of justice; for the revision of any rules of procedure, civil or criminal, at present established in those courts, by whatever authority; and for the abolition or reduction of any improper or exorbitant fees which may be taken there. Lord Ripon suggested the establishment of a commission of inquiry for these purposes. If your Lordship should find that such a measure would be really practicable and convenient, you will give effect to it, apprizing the two Houses of your intention, and recommending to the House of Assembly to make provision for the necessary expense. If those Houses should prefer any other mode of revising and regulating what relates to this important class of subjects, your Lordship's active co-operation will not be wanting in any scheme which may be properly digested for the purpose; nor will you forget that upon such topics more than common deference is due to the judgment of those who, from local knowledge, constant habit, and long experience, have acquired a great familiarity with them.

The apprehension which the inhabitants of French origin have expressed, that the use of their native language would be superseded or discouraged in legal proceedings, and in other public acts, is, I trust, without foundation. Your Lordship, however, will ascertain the facts of the case, and will give your zealous support and authoritative sanction to any measure which shall secure to the inhabitants, whether of French or of English origin, the equal and unrestricted use of their

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to Earl Amherst.  
2 April 1835.

their native tongues in all places, and on all occasions where any public business, legislative, judicial, fiscal, or otherwise, may be transacted.

His Majesty utterly disclaims, for himself and for all persons acting under his authority, a policy so narrow and illiberal as that of compelling the numerical majority of the inhabitants of Lower Canada to employ in public documents and deliberations a language which they are not accustomed to use in the intercourse of private life.

I adopt, to their full extent, the views and the language of Lord Ripon respecting the impartial admission of the Canadians of French origin to their equal share in all public employments which may become vacant in the Province. This is a subject on which, from the nature of the case, it is barely possible that any definite and inflexible rule should be established. The Governor of the Province must exercise a discretion, governed by the nature of the office to be filled, and the qualifications, absolute or relative, of the different candidates. So much importance do I attach to the prevention of any partiality in the distribution of vacant offices, that if your Lordship should discover the means of laying down a precise rule for the guidance of those by whom the government is to be administered in future times, it will be cheerfully adopted and sanctioned by the King.

In the absence of any such specific regulation, I can only record anew, with the utmost earnestness, the reiterated injunction that every effort be made to place in public stations, for which they may be qualified, any Canadian gentlemen presenting themselves as candidates, until some approach to a just balance in this respect be established between the two races.

The accumulation of numerous, and especially of incompatible offices, in the same hands, is an abuse against which provision might be made by direct legislation; and to any law of that kind, if properly framed, your Lordship will not refuse His Majesty's assent.

Lord Ripon gave to the people of Lower Canada a pledge, conceived in the most forcible terms, of the desire of His Majesty's Government to countenance every judicious plan for the general diffusion of sound knowledge, both religious and literary, whether by elementary instruction, or by the establishment of colleges for pupils in a more advanced stage of education.

To the complaints which have been made of reluctance to redeem that pledge, your Lordship will, I trust, be able to give the most complete practical refutation. For giving effect to any judicious plan or reasonable recommendation of this nature, there is no branch of the Royal authority, legislative or administrative, nor any legitimate influence of the Crown, which your Lordship will not call into exercise. The settlement of some comprehensive scheme of general education will, I trust, remain as a lasting monument of your Lordship's mission to Lower Canada.

The power of reserving for the signification of His Majesty's pleasure Bills passed by the Council and Assembly having been expressly given by Parliament, cannot be withdrawn by any instructions, issued by the King or in His Majesty's name. It is alleged that recourse has been too frequently had to this mode of proceeding. Without expressing an opinion on that subject, I think it right to record, for the guidance of those to whom the administration of the government of Lower Canada may hereafter be committed, His Majesty's commands that a very cautious and abstemious use be made of this power.

I have thus adverted to the principal topics embraced in the 92 Resolutions of the House of Assembly of Lower Canada, without attempting to pursue them all into minute detail; because, at this distance from the place, it is more important clearly to enounce the general principles by which His Majesty's Government are directed, than to prescribe the particular measures which they may desire to adopt or to sanction. Those principles are few and simple. They consist in maintaining inviolate the spirit of the Parliamentary Charter of 1791; in deprecating all unnecessary Parliamentary legislation respecting the internal affairs of Lower Canada; in transferring to the representatives of the people the utmost possible control over the produce of all the duties levied within the Province, and of all branches of the public revenue arising there; in discountenancing all favour shown to any one class of the inhabitants to the prejudice of the rest; and in making the prosperity of the Province, with the conciliation of the inhabitants to each other and to this kingdom, the only objects to be borne in view in the administration of the government of that part of His Majesty's dominions.

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

Enclosure, No. 1, in Lord *Aberdeen's* Despatch to Lord *Amherst*, dated 2d April 1835.—  
(No. 2.)

Earl of Aberdeen  
to Earl Amherst.  
2 April 1835.

A MINUTE, containing a compendious Statement of the progress of the Controversies which have subsisted between the House of Assembly of Lower Canada and His Majesty's Government.

Enclosure, No. 1.

In the following paragraphs, Lord Aberdeen will purposely confine himself to a naked statement of facts, unaccompanied by any comment, or by the expression of an unnecessary opinion; his object being merely to supply Lord Amherst with a convenient epitome for his Lordship's use of various facts and dates, which it might not perhaps be otherwise easy to bring together for immediate use.

THE great Province of Quebec, comprising all the regions now known as Upper and Lower Canada, was ceded to Great Britain by the fourth article of the treaty of peace, of the 10th February 1763. In October of the same year, a proclamation of King George 3 announced, that, as soon as circumstances would admit, a General Assembly would be summoned in the Province of Quebec, in the same manner as in the other British North American Colonies; and until that design could be completed, "the benefit of the laws of England" was promised to the inhabitants.

The conquest and  
cession of Canada.

Eleven years elapsed before any attempt was made to fulfil this engagement. Instead of a popular Legislature, a Council of Government was erected, with powers both legislative and administrative; and, until the year 1774, that form of constitution continued in force throughout the entire Province.

The Constitution of  
1774.

The contest with the North American Colonies had naturally indisposed the Government to increase the number of Legislative Assemblies on that continent, while it strongly suggested the policy of conciliating, to the utmost possible extent, the inhabitants of Canada. Accordingly, in the year 1774, two statutes were passed "for the relief and better government of the people of the Province of Quebec." Of these, the first (14 Geo. 3, c. 83) secured the most ample toleration to the priests and laity of the Roman-catholic religion; established the French civil and the English criminal law; and created a Legislative Council, to which all power of general taxation was denied. The second of these Acts (14 Geo. 3, c. 88) repealed various burthensome taxes, levied under the French Government, and substituted for them more moderate duties on spirits and melasses. The produce of those duties was declared applicable by the Lords of the Treasury to the expenses of the civil government, and of the administration of justice.

The Revenue Act  
of 14 Geo. 3.

These Acts were received in the Province as valuable concessions, and produced the good effects contemplated by their authors. During the whole of the American contest the Canadas retained their allegiance to this kingdom.

The Canada Bill of 1791 divided Quebec into the two Provinces of Upper and Lower Canada, and established in each a Legislative Council and an Assembly. It was at that time contemplated that an hereditary aristocracy might be formed in these Provinces by attaching to seats in the Council titles of honour, which were together to pass to the descendants of the original grantees. In the same spirit, and as a step towards this consummation, the seats of legislative councillors were expressly declared to be tenable for life.

The Constitution of  
1791.

For the present purpose it is enough to recapitulate, in very general terms, the most material of the other provisions of the statute of 1791. It provided for convening Assemblies in the two Provinces; ascertained the qualifications of electors and of members; required an annual session to be holden; and limited to four years the duration of the provincial Parliaments. It declared that the English tenure of common soccage should apply to all land which might be subsequently granted by the Crown. It recited the terms of the "Declaratory Act," (the statute of 1778, by which Great Britain had disclaimed the right of colonial taxation, except for the regulation of trade, and the right of appropriating the proceeds of trade duties,) and pledged Parliament to observe that engagement towards the Canadas.

The Constitutional  
Act of 1791.

Lord Dorchester was the first Governor of the Province after the year 1791. His Lordship commenced the practice of laying before the House of Assembly annually both an estimate and a statement of ways and means. It was not, indeed, proposed that they should vote the estimate, but only that they should grant an aid towards the deficiency. Accordingly, in the year 1795, an Act was passed by the Canadian Legislature, by which an additional sum of 5,000 £ sterling per annum was placed at the disposal of the Crown towards the expenses of the civil government, and the administration of justice. Six years afterwards, that is, in 1801, certain duties on tobacco were imposed by a provincial Act, (41 Geo. 3,) the proceeds of which were declared applicable by the King to the same purposes.

Lord Dorchester.

Nineteen years elapsed from the settlement of the Canadian Constitution, during which the practice thus introduced by Lord Dorchester was followed by his successors. But the provincial revenue derived from the 14 Geo. 3, and the two last-mentioned grants, were not sufficient to meet the charges of the government of Lower Canada; and the deficiency was annually supplied by a vote of the House of Commons of Great Britain.

The grant by the  
Assembly to the  
Crown, 1795.

Grant by the  
Assembly to the  
Crown, 1801.

Deficiency supplied  
by Parliament.

In the year 1810 the House proposed to assume to themselves the entire charge of the civil government of the Province, for reasons which it would be foreign to the purpose of the single object of this Minute to investigate;—that offer was declined by the British Government.

1810.  
Offer by the Assem-  
bly to undertake the  
whole charge, de-  
clined.

1818.

Application to the Assembly to undertake that charge.

1818.

First assumption of the charge by the Assembly.

In 1818, by Lord Bathurst's directions, Sir John Sherbrooke applied to the Assembly to undertake the burthen, which, eight years before, they had offered to assume. He did not ask them for a permanent supply, but merely to vote what was wanting for the current year. The demand was met with the most precise compliance—the Assembly voting the exact fractional sum proposed by the Governor. They did not, however, pass any Bill, but simply authorized, by a resolution, the payment by the Receiver-general of the sum required. To meet the new demands on the provincial Treasury, the Assembly proceeded to impose new taxes, of which, however, they reserved the appropriation to themselves.

In the following year, 1819, the Assembly were again called upon to vote the Governor's estimate. Again they acceded to all his demands.

Duke of Richmond's estimate by "chapters."

The Duke of Richmond succeeded Sir John Sherbrooke, and was the author of an innovation which first brought the Government and the Assembly into collision. His Grace sent down his estimate in a new form. It was divided into "chapters," each "chapter" corresponding with the demands of some one department; and for each was asked a sum, of which the proposed application in detail was unexplained. For example, he proposed that 1,909*l.* 6*s.* should be voted for the Executive Council.

Assembly vote the supply, not by "chapters," but in detail.

The Assembly resisted this novelty. They refused to vote by chapters, and declared their right to deliberate on each specific item. Accordingly they passed a Bill, in which they adopted, as a basis, Sir John Sherbrooke's estimate of 1818, and appropriated the entire supply of the year to each head of public service in detail. The Legislative Council rejected this Bill as an encroachment on the King's prerogative, and the Assembly were prorogued by the Duke of Richmond with a severe rebuke.

Notwithstanding the loss of the Bill of Supply, the Duke of Richmond drew from the Receiver-general the precise sum for which he had applied to the Assembly; thus directly ordering the application of public money, of which the grantors had expressly reserved the appropriation to themselves.

1820.

Lord Dalhousie's demand of a permanent supply.

The Duke was succeeded, in 1820, by Lord Dalhousie. In that year his Lordship announced to the Assembly that the permanent revenues of the Crown were insufficient, by a sum of 22,000 *l.*, to meet the annual expenditure, and he asked a further grant of that amount, which he required to have permanent. The Assembly refused to do more than make an annual grant. This was accordingly effected by a Bill, in which the supply was carefully appropriated to each head of public service. The Council rejected this Bill. The House then voted the funds which they thought necessary for the public service of the year; but Lord Dalhousie informed them that he could not act upon their resolution, since the Council had not concurred in it. His Lordship then prorogued the Assembly, telling them that he would issue the required money on his own responsibility,—a measure, the necessity of which he ascribed to their conduct. Accordingly Lord Dalhousie drew from the Receiver-general not only the funds which the Assembly had refused, but considerably more.

Lord Dalhousie's issue of the Assembly's money.

In Lord Bathurst's despatches of the 11th September 1820, and the 30th September 1821, these proceedings were approved. His Lordship, however, earnestly impressed on Lord Dalhousie the necessity of strict economy. He admonished him to apply the Crown revenue to those objects only for which the Crown was peculiarly interested to provide; to confine his expenditure within the limits of that revenue; and to leave the Assembly either to support or to starve objects of a popular nature, as they might think fit.

Dispute between the two Canadas.

During these discussions a controversy had grown up between the two Canadas, respecting the apportionment between them of the duties levied at the port of Quebec. In order to adjust this dispute the then Government brought into the House of Commons a Bill for reuniting the two Provinces, and for establishing a General Assembly common to them both. The measure was defeated; but in substitution for it was introduced and carried an Act, usually called "The Canada Trade Bill," which provided for the apportionment of the duties, and virtually rendered permanent certain temporary Revenue Acts of the Legislature of Lower Canada.

1823.

Lord Dalhousie's double estimate.

In the year 1823 Lord Dalhousie acted upon Lord Bathurst's instructions. He prepared two distinct estimates. The first embraced what were called the general, the second what were termed the local establishments. The first, in effect, comprised all those services in which the Crown was more immediately interested; and the second all those of a more popular nature. The House were informed that the Crown revenue would meet the first of these estimates; and they were requested to provide for the second. The required money was accordingly granted, and the session was closed with mutual courtesies. The Assembly, however, had carried two important objects. The Governor had abandoned the claim to a permanent grant, and had drawn up his estimate, not in "chapters," but in detail.

Mr. Caldwell's default.

Pending the debates between the Governors and the Assembly, a sum amounting to 96,000 *l.* and upwards had accumulated in the hands of the Receiver-general, Mr. Caldwell. In 1823 that gentleman failed, and the money was lost to the public.

Supply refused except on the terms of the Assembly.

In 1824 Lord Dalhousie repeated the experiment of sending to the House two distinct estimates, comprising respectively the Government and the popular establishments. The Assembly now advanced another step in the contest. They answered the demand thus presented to them by a series of resolutions. They denied the right of the Crown to select their own favoured objects upon which to employ the Crown revenue. They complained of the manner in which the two estimates were arranged; and they condemned, in the strongest terms, the unlawful appropriation by Lord Dalhousie of money which was subject only to their own disposal. After adopting these resolutions they proceeded to reduce the Governor's estimate in all its parts, especially in that which was dedicated to Government objects, and which he had proposed to defray from the Crown revenue; and with these reductions they voted

voted the supplies for the year. The session was again closed, with strong censures of the Assembly by Lord Dalhousie.

In 1825 the temporary administration devolved upon Sir Francis Burton. He receded from the pretension made by Lord Dalhousie to break the estimate into two parts, of which one only was to be a charge upon the Government funds; but laid before them, in full detail, a statement of every service for which it would be necessary to provide. He then stated the probable amount of the King's revenue, and proposed to the House to supply the deficiency. Again the Assembly enlarged their pretensions. They proceeded to resolve that the funds of which the Government claimed the disposal could not be lawfully expended without their concurrence. They then reviewed the estimate; and, after making considerable reductions, voted it for one year. Thus the Assembly gained every point for which they had contended. There was no longer mention of chapters, or of a permanent grant, or of splitting the estimate into two parts, a Government and a popular part; or even of the Crown definitively settling to what purposes its own revenue should be applied. The Assembly had, in effect, acquired the control of all the revenues of the province on their own terms.

Lord Bathurst strongly disapproved these concessions, and addressed to Sir Francis Burton a very marked censure for his conduct.

Lord Dalhousie was despatched to resume his government, and reverted to his former plan of dividing the estimate for 1826 into two parts. While the House were in deliberation on the subject, Lord Bathurst's despatch to Sir F. Burton was communicated to them. The Assembly immediately addressed the King, protesting against the doctrine advanced by the Secretary of State, that one part of the revenue might be lawfully appropriated without their consent; and they passed a Bill, in which they asserted for themselves the right of appropriating the whole. Lord Dalhousie would not accept this Bill, but reserved it for the signification of the King's pleasure. The Assembly was then dissolved.

In 1827 Lord Bathurst resigned his office, and was succeeded by Lord Goderich. In July of that year Lord Goderich apprized Lord Dalhousie of his general concurrence in his predecessor's claim to the appropriation of the Crown revenue without reference to the Assembly. But Lord Goderich directed that an offer should be made to the House, of resigning the King's revenue to their disposal, in consideration of a civil list of 36,000 *l.* per annum.

The Canadian Assembly met in the autumn of 1827, and presented Mr. Papineau to Lord Dalhousie as their Speaker; but his Lordship refused to accept him in that character. The consequence was, that in the winter of 1827-8 no session at all took place, and it was impossible to communicate to the House the proposal made by Lord Goderich for a civil list.

In 1828 Lord Goderich resigned the seals of this department, which were transferred to Mr. Huskisson. So general was now the discontent prevailing in the province, that no less than 87,000 people, or at least one-fifth of the entire population, signed petitions to the King and to both Houses of Parliament for the redress of their grievances. Three delegates were commissioned to be the bearers of them. Mr. Huskisson resolved to move the appointment of a Committee of the House of Commons to take these complaints into consideration; and in the session of 1828 such a Committee was accordingly appointed.

The great sources of discontent in the province were, the claims advanced by the Secretary of State, and by the Governors, to the appropriation of so large a part of the Canadian revenue; the illegal application of other parts of that revenue by the Duke of Richmond and Lord Dalhousie, in defiance of the Assembly; and the very heavy loss occasioned by Caldwell's default, which itself has been brought about by these dissensions. But various other causes of irritation had sprung up pending this financial discussion; and to these it is not necessary in this place to advert, except in general terms, because, as will appear in the accompanying Minute, No. 2, they have chiefly been obviated by the more recent measures of the King's Government. It should, however, be understood that the original petitioners were met by several counter-petitions. Parties in Canada had followed, to a great extent, the original division of the inhabitants into the French and English races. Some few of the leading opponents of the Provincial Government were indeed Englishmen by birth, and, on the other hand, some French names were to be found in the list of its adherents; but the opposition, which, under other circumstances, Lord Dalhousie's measures might have incurred from the English settlers, was silenced by the motives which separated the two races from each other. The electoral divisions of the country had thrown into the hands of the French almost the whole representation, while the English held a large proportion of all the places of honour and emolument. The one was possessed of a majority in the Assembly, and the other in the Legislative Council. The French held as seigneuries all the finer parts of the province, while the English settlers formed a distinct community in that region which is called the townships. The French were in possession of almost all collegiate and ecclesiastical endowments, while the English had possessed themselves of every lucrative branch of foreign commerce. From these contending parties the following complaints reached the House of Commons, and the Canadian Committee of 1828.

1. A series of Acts of Parliament had provided for the commutation of the feudal tenures in Lower Canada, with the consent of the lord, into free and common soccage tenure. The French complained of these English statutes, as calculated to embarrass all titles to property in the Province, while the English remonstrated against them as inadequate to the attainment of their professed design.

2. The English complained of the inequality of the representation of the people, and

1825.  
Sir Francis Burton's estimate.

1825.  
The Assembly appropriate the King's revenue.

1826.  
Petitions from the Assembly against Lord Dalhousie's pretensions.

1827.  
Lord Ripon's demand of a civil list of 36,000 *l.* in exchange for the King's revenue.

1828.  
Petitions to Parliament.  
House of Commons' Committee of 1828.

Sources of discontent.

Counter-petitions.

French and English parties.

Complaints of the two parties.

Complaints of the petitioners.

prayed for such a new division of the country into electoral districts as should give to numbers and capital their due weight in the popular branch of the Legislature.

3. The French petitioners remonstrated against the large and improvident grants which had been made of extensive tracts of land to absentees.

4. They remonstrated against the claim advanced and acted upon by the Government, to appropriate, without the consent of the House of Assembly, a large part of the provincial revenue.

5. They insisted that the tenure of the judicial office ought to be during good behaviour, and not during pleasure.

6. They complained of the defalcation of Mr. Caldwell, and the loss incurred on that account by the Province.

7. As connected with Caldwell's case, they further complained that the Receiver-general and sheriffs were appointed without giving security for the faithful management of their receipts.

8. Extensive estates, which had been the property of the order of the Jesuits, had been taken possession of by the Crown, and the rents applied for the ordinary purposes of the King's revenue. The French petitioners reclaimed this property, as applicable, by the House of Assembly, to the general purpose of religious instruction or education.

9. The composition of the Legislative and Executive Councils was represented as highly objectionable, because the judges, and other dependents on the Crown, were included in them, and because the most considerable proprietors in the country were excluded from them.

10. The attempts to alter the constitution of the Canadas, and to unite them, by Act of Parliament, into one province, formed the next alleged grievance.

11. Then followed the complaint that Parliament had perpetuated the temporary duties of Lower Canada, with a view to the apportionment of the proceeds between the two Provinces.

12. The large extent of territory appropriated as reserves for a Protestant clergy was the next head of remonstrance.

13. This was succeeded by a complaint, that the management of those lands, and the emolument resulting from them, were confined entirely to one class of Protestant clergy, those, namely, of the Established Church.

14. The petitioners further represented that the law respecting juries was insufficient, partial, and oppressive.

15. They complained that they were unable to appoint an agent to represent the Legislature in England, the office of provincial agent being at that time held, under an appointment from the Secretary of State, by the chief clerk in his office.

Complaints of the  
petitioners.

Finally. The English petitioners represented it as a great hardship that no convenient system for registering sales of land had been introduced, but that all conveyances were made in the forms and according to the principles of the French law.

While the Committee to which these petitions had been referred were engaged in the consideration of them, Mr. Huskisson resigned the office, and Sir George Murray received the seals of this department.

Report of Canada  
Committee.

The Canada Committee proceeded to make their report. They adverted to each of the complaints already enumerated, and gave recommendations in reference to each, the substance of which will be here stated with the greatest possible brevity. The arrangement of topics pursued by the Committee does not, however, exactly correspond with that which is abstracted from the petitions.

1. They advised that the Act of Parliament respecting the tenures of land in Lower Canada should not be repealed.

2. That, with reference to the common soccage lands, some simple form of mortgage and conveyance, borrowed from the English laws, should supersede the French system.

3. That means should be taken, even by the sacrifice of the territorial rights of the Crown, to enfranchise the feudal land.

4. That local courts should be established in the townships.

5. That the French Canadians should be permitted to retain their feudal tenures, if such was their pleasure, and even to receive new grants from the Crown on the same principle.

6. That the representation of the people should be enlarged and rendered more equal, so as to admit the English to their fair share and influence in the Assembly.

7. That, to prevent the mischiefs arising from large tracts being held in a wild state by absent grantees, a tax should be imposed on uncleared land.

8. That all the revenue of the Province, except the territorial and hereditary revenues, should be placed under the control of the Assembly.

9. That proper measures should be taken to prevent future losses to the revenue by the defaults of public accountants; for which purpose securities were to be given, and a regular audit of accounts established.

10. That the Jesuits' estates should be applied to the purposes of general education.

11. That the constitution of the Legislative Council should be made more independent; that the majority of the members should consist of persons not holding offices at the pleasure of the Crown; that the judges should not be members of either Council, except that the chief justice might, on particular occasions, be summoned to the Legislative Council.

12. That Parliament should not interfere with the constitution of the Province, except in cases in which the powers of the local Legislature might be inadequate to the requisite reforms.

13. That,

13. That, if possible, a permanent settlement should be made between the two Canadas for the apportionment of the duties levied at the port of Quebec.

14. That any defects existing in the jury law should be remedied by Acts to be made for that purpose.

In September 1828, Sir James Kempt was appointed to the Government of Lower Canada. Immediately upon Sir James Kempt's appointment, Sir George Murray addressed to him a despatch, (dated the 29th September 1828,) of which the object was to explain to what extent and in what manner it was designed to carry into effect the recommendations of the Committee.

Sir James Kempt's Administration, 1829.

On the authority of the law officers of the Crown, whose opinion on this subject had been virtually adopted and sanctioned by the Committee, Sir George Murray declared that the revenues arising from the 14 Geo. 3, had been placed by Parliament at the disposal of the Lords of the Treasury; and that it was not competent to their Lordships to divest themselves of the duty, to the discharge of which they had thus been called by the Legislature. Referring to the practice of employing the funds at the disposal of the Assembly, without their concurrence, which had been pursued by Lord Dalhousie and the Duke of Richmond, Sir George Murray laid it down as a fixed and unalterable principle that this custom should be entirely discontinued. He remarked, that as these arrangements would leave the Government in dependence upon the Assembly for many essential branches of the public expenditure, the House would necessarily acquire an indirect control over the whole revenue; and that it would remain for Parliament to consider how the Government of the Province might be extricated from these difficulties.

Sir Geo. Murray's despatch on the Report.

With a view to the service of the current year, Sir George Murray directed Sir James Kempt to address the Assembly in a speech, of which a copy was transmitted. That speech stated that the revenues subject to the disposal of the Crown consisted, 1st, of the proceeds of the 14 Geo. 3, c. 88; 2d, of the proceeds of the provincial Statute, 35 Geo. 3; 3d, of the casual and territorial revenue; and 4th, of fines and forfeitures: that from the gross amount of all these four resources the King had directed the payment of the salaries of the Governor and the judges; but that the Lords of the Treasury would abstain from exercising their power of appropriating the rest, until they could be apprized of the wishes which the House of Assembly might entertain, and of the advice they might offer on that subject. The speech then applied for all further necessary aids to be granted by the Assembly from the funds at their disposal, and recommended the passing a bill of indemnity for any past appropriations which might have been illegally made of any of the public funds of the Province.

Financial arrangements for 1829, 1830.

Sir George Murray then directed Sir James Kempt to propose to the Provincial Legislature the enactment of a law requiring the Receiver-general and sheriffs to account, at short intervals, for all their receipts, and to pay them over to the Commissary-general, who, on demand, was to draw on the British Treasury for whatever should thus come to his hands.

The despatch next signified the willingness of His Majesty's Government to receive, as provincial agent, any person who should be nominated to that office by an Act to be passed by the Provincial Legislature for the purpose.

Sir James Kempt was desired to furnish all necessary explanations respecting the question of tenures, and with reference to the methods to be adopted for obviating all the inconveniences under which the Province in that respect laboured. To the local Legislature were referred the various questions of tacit mortgages, expensive forms of conveyancing, the registration of deeds, and local courts in the townships.

It was suggested that a tax should be imposed on wild land, as a remedy for the abuse of large uncleared tracts being held by absentee proprietors.

Respecting the Jesuits' estates, the constitution of the councils, and the clergy reserves, Sir G. Murray called for information, for the guidance of the Government, as to the methods by which effect could be most conveniently given to the suggestions of the Committee on those topics.

Sir James Kempt carried the preceding instructions into effect in the month of November 1828, by the communications which he then made to the Council and Assembly. In the course of the same session he transmitted to the Assembly an estimate of all the charges for the year. Against this expenditure was set the Crown revenue, as claimed by Sir George Murray's despatch; and the House were called upon to supply the deficiency. The House met this application by a series of resolutions, and by a Bill of Supply.

Sir James Kempt's proceedings.

By the resolutions the House declared, in the most peremptory manner, that it was their right to control the receipt and expenditure of the whole public revenue arising within the Province. They then proceeded to strike off various parts of the Governor's estimate, and to pass a Bill of Supply, providing that out of the unappropriated monies in the hands of the Receiver-general, there should be paid such a sum of money as, together with the monies already appropriated by law for the purpose, should amount to the sum to which they had reduced the estimate. This Bill was accepted by the Legislative Council and by Sir James Kempt.

Proceedings of the session 1828-9.

Thus the principle maintained by Sir George Murray, of the right of the Crown to appropriate the revenues of the 14 Geo. 3, was denied, and the course of proceeding suggested by him was declined. The House claimed the funds as their own; and instead of advising the Crown how they should be spent, assumed and exercised the right of reducing at their pleasure every part of the estimate. They appropriated, according to their own pleasure, the funds, of which the appropriation had been claimed for the Treasury.

The session of the Provincial Legislature of 1828-9 produced a second very important law. The country was divided into new electoral districts, avowedly for the purpose of

New election law.

giving to the English settlers in the townships their due share in the representation. It was alleged by the advocates of the English interest that this professed reform was altogether illusory; because, although it admitted the English to a share in the provincial legislation, it, at the same time, gave so many new members to the French interest, as to secure to that party a more decisive and permanent preponderance, in the popular branch of the Legislature, than they had previously enjoyed.

New election law accepted.

On the arrival of these Bills in England, in the summer of 1829, Sir George Murray consulted with his colleagues as to the course of proceeding to be taken on them. It was the result of those deliberations that both the Bills should be confirmed by the King.

Supply Bill of 1828-1829 disapproved, but accepted.

The acceptance of the Bill of Supply was accompanied by the expression of Sir George Murray's regret that the Assembly had been induced and permitted to usurp an authority over the revenue, which His Majesty's Government and the Canada Committee had concurred in denouncing as illegal.

Financial Bill brought into Parliament, 1829.

The debates upon the Roman-catholic Relief Bill, in the year 1829, rendered it impossible to fix the attention of Parliament to the state of the finances of Lower Canada. Yet such a Bill was introduced by Sir George Murray. The object of it was to transfer to the Canadian Assemblies the appropriation of the proceeds of 14 Geo. 3, after deducting the amount of the salaries of the chief officers of the Government, or, in other words, the securing a Civil List.

Canadian session of 1829-1830.

In the despatch announcing to Sir James Kempt the failure of his hopes of settling this question in the session of 1829, Sir G. Murray directed him to revert to the instructions which he had received in 1828, as to the method in which the estimates should be formed and the supplies voted; and the Assembly were to be admonished of the inconvenience which further interference in their illegal pretensions might occasion.

In the Canadian session of 1829-30 Sir James Kempt accordingly made the required application to the Assembly. The result was precisely the same. They again reduced the Governor's estimate, and again determined to what purposes each and every part of the ways and means for the year (the Crown revenue included) should be applied.

1830.  
Lord Ripon's instructions.

The seals of the Colonial department were transferred, in November 1830, to Lord Ripon. In the preceding month the Government of Lower Canada had been resigned by Sir James Kempt into the hands of Lord Aylmer. Lord Ripon assumed the office at that precise season of the year at which it was essential that despatches should be sent to Canada for the instruction of the new Governor. His Lordship, therefore, within eight days from his appointment, wrote a despatch, in which he was under the necessity of avowing his want of preparation for the task; and Lord Aylmer was, in effect, directed to make the best temporary arrangement he could. In order to meet the difficulty of supplying the deficit left in the preceding years, upon the Governor's estimate, Lord Ripon drew up a list of reductions which would very nearly, if not altogether, have brought the demands of the Government to an exact level with the measure of bounty manifested by the Assembly in the two last sessions.

1830.  
Lord Ripon's proposed Civil List, 19,000 l.

Within a month, however, from his accession to office, Lord Ripon was able to digest and to transmit to Lord Aylmer more comprehensive instructions for his guidance. In substance they were, that the Crown should abandon the revenues of 14 Geo. 3, with some other small sources of income, to the Assembly, in exchange for a Civil List amounting to 19,100 l. Of that amount, 5,000 l. were to be defrayed from the grant of 5,000 l. per annum, already made by the Canadian Act, 35 Geo. 3, c. 9; so that the new appropriation to be solicited from the House would amount only to 14,100 l. This Civil List was required, either for the King's life, or for seven years; and Lord Ripon announced the intention of the Government to bring into Parliament a Bill by which the Treasury would be authorized to surrender to the Assembly the appropriation of the revenues of the 14 Geo. 3.

1830.  
Lord Ripon's financial instructions.

With these instructions was transmitted to Lord Aylmer a separate despatch, directing the purposes to which the hereditary revenue of the Crown (that is, the Land and Timber Fund) should be applied. Of these objects, the maintenance of the clergy of the Church of England was the chief.

1831.  
Messages between Lord Aylmer and the Assembly.

Lord Aylmer, in obedience to these instructions, made the required communications to the House of Assembly in February 1831, and laid before them the estimates for that year. He further enumerated, for their information, all the funds constituting the casual and territorial revenue. Then arose a series of communications between the House and the Government, to which some reference is indispensable. The House applied for accounts of the gross amount of the casual and territorial revenue for each year from the year 1818, which the Governor immediately promised. The House then asked for copies of all his instructions and despatches touching the financial affairs of the Province. This Lord Aylmer declined to supply. Another address applied for an explanation in detail of the votes proposed to be taken in the Civil List for contingencies, miscellaneous, and pensions. The Governor stated himself to be unable to furnish such details. Then the House asked for an account of the proceeds of the Jesuits' estates. Lord Aylmer answered; that he did not think himself at liberty to produce them. They next demanded an account in detail of the receipt and expenditure of the territorial revenue. This also the Governor declined to furnish. Next, the House inquired what use the Government meant to make of the territorial revenue. They were told in general that it was to be applied in part towards education and the maintenance of the clergy. Finally, they addressed Lord Aylmer for information about any Bill brought or to be brought into Parliament respecting the finances of the Province. His Lordship told them that he knew nothing more than the general intention of the Government to obtain a Bill relieving the Treasury from the duty of appropriating the 14 Geo. 3.



All these communications were prefatory to proceedings in which the Assembly resumed their hostile attitude towards the King's Government. The Governor's estimate and messages having been referred to a Committee, a report was made to the House strongly condemnatory of the claim advanced by the Government to the appropriation of the revenue, 14 Geo. 3, and declaring that the most material of the recommendations of the Canada Committee had not been carried into effect. The Committee then reported their opinion that it was inexpedient that any further provision for the expenses of Government should be made.

1831.  
Resolution to grant no supply.

The House adopted and concurred in this report. They further resolved that the chief cause of all the abuses was to be found in the constitution of the Legislative Council.

Before the close of the session the House passed a Bill of Supply for the year, upon the same principle as that observed in the two preceding years.

1831.  
Supply Bill passed.

Lord Aylmer appears to have felt the urgent necessity of bringing, if possible, to some definite issue the questions in debate between the Government and the House of Assembly; and, therefore, in an address to them of the 23d March 1831, he urged them, in terms of the utmost emphasis, to let him know the whole extent of their grievances. "Am I," he says, "to understand that the petition which I have just heard read conveys all that the House of Assembly have to complain of up to this day? Or am I to understand that there remains something behind—some unripe grievance or complaint, which it may be intended to bring forward hereafter, when those now produced shall have been disposed of? This is the information I ask of you. This, gentlemen, is the information which I will even implore you to afford me," &c. To these instances no other answer was made than that which was contained in the petition to which the Governor referred. That petition embraced, under twenty distinct heads, the whole catalogue of grievances which, in March 1831, the Assembly thought proper to record for His Majesty's information.

1831.  
Lord Aylmer's demand for a complete statement of grievances.

On the 7th July 1831, Lord Ripon addressed a despatch to Lord Aylmer, in which, with reference to the last-mentioned petition, he discussed each of the complaints of the House of Assembly. By that despatch, the Jesuits' estates were surrendered to the disposal of the Legislature for the support of education. All accounts of past receipt and expenditure connected with those estates were to be laid before the Assembly. All the money which had been recovered from Mr. Caldwell or his heir was to be placed at the disposal of the House. The Governor was directed to fulfil every engagement at any former time made by the Crown to appropriate land for the support of education. An assurance was given, that in all modifications of the laws of trade which might be recommended to Parliament, the commercial interests of the Province would be steadily borne in view. The Governor was directed to assent to any Bills which might be presented to him, to enable towns and other local districts to manage their own affairs. The King's concurrence was promised to any laws which might be made for simplifying the general rules respecting the purchase, alienation, and descent of land in the Province. Lord Aylmer was instructed to reject no Bill which the Legislature might see fit to pass for improving the administration of justice. An offer was made to recommend to Parliament the repeal of any English Statute respecting the tenure of lands in Canada which the Provincial Legislature might think objectionable. The judges were earnestly advised to decline all interference in the political affairs of the Province; and, with that view, such of them as were members of the Council were informed that it was His Majesty's wish that they should abstain from acting in that character. The desire to prefer the English to the Canadian colonists in the distribution of the public offices was disavowed in the most peremptory terms. Sir George Murray's proposal for bringing all public accountants to frequent and effective audits was repeated. The co-operation of the King's Government was promised in any measures which the Legislatures of Upper and Lower Canada might concur in recommending for the apportionment between them of the import duties levied at Quebec.

July 1831.  
Lord Ripon's conciliating despatches.

In a despatch of the same year, Lord Goderich signified His Majesty's pleasure, that, upon the salaries of the judges being made permanent, and being secured on funds not liable to be withdrawn by the Assembly, their offices should be held during good behaviour, and he authorized Lord Aylmer to assent to any Bill properly framed for that purpose.

In the same year, as an effectual remedy against improvident grants of land, Lord Ripon instructed the Governor, that for the future, no grants of land whatever were to be made gratuitously, but that all was to be disposed of by public auction at a reasonable upset price.

By these various communications, the whole series of Canadian grievances, as recorded in the resolutions and petition of the Assembly of 1831, were remedied, so far as they were remediable, by the Executive Government. The much-agitated question of finance required the aid of Parliament, and that aid was at length afforded.

At the close of the session of Parliament of 1831, an Act was passed, which, without qualification or reserve, transferred to the Assembly the appropriation of the revenue of 14 Geo. 3, c. 88. This Act was transmitted to Lord Aylmer in a despatch of the 29th September 1831. In that despatch Lord Aylmer was directed to apply to the Assembly for a Civil List, amounting to 16,350*l.* per annum, in which was included the whole judicial establishment. In the contingency of any Bill being tendered to Lord Aylmer, framed on the principle of leaving the judges and the chief officers of Government dependent on the Assembly for their salaries, the Governor was directed neither to accept nor to reject it, but to reserve it for the signification of the Royal pleasure.

Revenue of 14 Geo. 3 given up to the Assembly.

The Canadian Assembly met in the winter of 1831. They began with resolutions expressive of unusual cordiality and satisfaction with the instructions addressed by Lord Ripon to the Governor. On proceeding to the despatch of business, the House commenced by passing

Session of 1831-2.

a Bill to secure the independence of the judges, and to erect the Legislative Council into a court for the trial of impeachments, to be preferred by the House of Assembly. The Civil List demanded by the Crown, exclusive of the judges' salaries, amounted only to 5,900 *l.* The House, however, refused to entertain the consideration of it. They contented themselves with passing a Bill, by which 58,095 *l. 0 s. 9 d.* were granted towards defraying the expenses of the administration of justice, and the support of the Civil Government. Thus, though in the same session the judges had been professedly made independent by one Bill, yet in a second Bill their salaries were made the subject of a temporary grant.

Supply Bill and Judges' Independent Bill reserved.

Supply Bill accepted, Judges' Bill disallowed.

These Bills were reserved by the Governor for the signification of the Royal pleasure. They were noticed by Lord Ripon in terms of grave and earnest regret. The money granted by the Bill of Supply had been appropriated, not by that, nor by any subsequent Act, but merely by votes of the Assembly, to certain specific services; and the House had not even condescended to notice the King's application for a Civil List. Still the Supply Bill was confirmed, to avert the inconvenience which its rejection must have caused. But Lord Aylmer was informed that henceforth the King would provide for the chief officers of Government from the revenues at his own disposal, and would repeat no more his application for a Civil List. The Judicial Bill was disallowed,—because it expressly claimed a right to appropriate the territorial and casual revenue; thus tacking to the Bill an object foreign to its professed scope;—because it still, in effect, left the judges dependent on the annual votes of the Assembly;—and, because, travelling far beyond the immediate occasion, it erected a tribunal, not for the trial of the judges only, but of any officers who might be impeached by the Assembly.

Session of 1832-3.

The provincial session of the winter of 1832 commenced with the expulsion, for the third time, of Mr. Christie, a member of the House, who had made himself obnoxious to the dominant majority. They then proceeded to protest against the terms in which, at the close of the preceding session, Lord Aylmer had expressed his regret for the rejection of the proposed Civil List. Their next measure was to pass a Bill of Supply and Appropriation. Against the sums granted for the support of seventeen different officers were introduced, in the schedule attached to the Bill, certain notes stating the conditions upon which alone those grants were to take effect. This Bill was rejected by the Council, on the ground, as it should seem, of their disapprobation of the form and substance of the annexed conditions. An amended Bill for securing the independence of the judges was brought into the Assembly, but was lost in that House.

Riot at Montreal.

Another change now occurred in the administration of Colonial affairs; the seals of this department having, in the spring of 1833, been transferred to Mr. Stanley.

Mondelet's case.

The session of the Canadian Assembly for 1832-3 lasted for an unusual period. It was chiefly distinguished by a protracted inquiry into the case of a riot which had taken place at Montreal, in which some persons had been killed by the military. The House did not close that investigation, though it consumed the greater part of their time. They also declared the seat of M. Mondelet, one of their members, vacant; he having accepted a place in the Executive Council. The Governor, as Keeper of the Great Seal, was called upon to issue a writ for a new election in M. Mondelet's room. This, however, he refused to do, alleging that there was no law in the Province by which, for the cause assigned in Mondelet's case, a seat would become vacant. The session was productive of little or no practical result.

Mr. Stanley's despatch, 1833.

Mr. Stanley entirely approved the Governor's decision not to issue a new writ for the city of Montreal. He condemned the lost Supply Bill as having attempted to establish the objectionable system of "tacking." He directed the Governor to apply that part of the provincial revenue of which the Crown claims the appropriation, as far as it would extend, to meet the judges' salaries and the rejected Civil List; and he declared that the responsibility for all the consequences which must flow from the failure of other supplies would rest with the Assembly.

Ninety-two resolutions of grievances.

The session of 1833-4 came to an abrupt determination. It was at first proposed in the Assembly that no communication whatever should be held with Lord Aylmer, and that no public business should be transacted. This purpose was, however, abandoned; and ninety-two resolutions were adopted by the House, recapitulating all their grievances. These resolutions were then incorporated into petitions to both Houses of Parliament, and M. Morin, a member of the House, was charged with the carriage of them to this country.

Report of Canada Committee of 1834.

Mr. Stanley, in the month of April 1834, moved the appointment of a Committee of the House of Commons to inquire how far the recommendations of the Committee of 1828 had been complied with by the King's Government; and also to inquire into the grievances set forth in the resolutions of the House of Assembly of the session of 1833-4.

The Committee sat till near the end of June, and then reported to the House that the most earnest anxiety had existed on the part of the Home Government to carry into effect the suggestions of the Committee of 1828; and that the endeavours of the Government to that end had been unremitting, and guided by the desire, in all cases, to promote the interest of the Colony; and that in several important particulars their endeavours had been completely successful. They proceeded to refer the existing animosities to some mutual misconception; and expressed their opinion that they should best discharge their duty by making no report on the points still in dispute. They declared themselves persuaded that the practical measures for the future administration of Lower Canada might best be left to the mature consideration of the Government responsible for their adoption and execution. They reported their opinion that it would not be expedient to lay before the House the evidence they had taken.

(signed) Aberdeen.

Enclosure, No. 2, in Lord *Aberdeen's* Despatch to Lord *Amherst*, dated 2d April 1835.  
(No. 2.)

A MINUTE, showing in what manner the Recommendations of the CANADA COMMITTEE of 1828 have been carried into execution by His Majesty's Government.

In the following pages Lord Aberdeen will attempt to show that there was sufficient reason to anticipate the entire conciliation of Lower Canada from the accomplishment of the resolutions of the Canada Committee, and that to the utmost of the power of the Crown those resolutions were in fact carried into execution.

Minute relative to Recommendations of Canada Committee of 1828.

The appointment of the Canada Committee of 1828 was, on every account, an important proceeding. The redress of grievances had been demanded, not by an isolated party, but by both of those great bodies which divide between them the wealth and political authority of the Province; with views essentially dissimilar, or rather hostile, they had concurred in an appeal to the metropolitan Government.

By each body of petitioners were deputed agents authorized to interpret their wishes, and to enforce their claims. The Committee itself was certainly not composed of gentlemen unfavourable to the views of the great numerical majority of the House of Assembly; they prosecuted the inquiry with great diligence and zeal; they examined the agents of both parties and every other person capable of throwing light on the subject referred to them. None of the questions brought under their notice, either by the petitioners or by the witnesses, were unexplored, and in the result a report was made, in which, with an explanation of every known or supposed grievance, were combined suggestions for the guidance of the Executive Government in applying the appropriate remedies.

The House of Assembly in Lower Canada, in their answer to the address with which the administrator of the Government opened the session of the Provincial Parliament in the winter of 1828, characterized this report in terms which may be transcribed as expressing, on the highest local authority, the claims of that document to respect, as affording a guide at once to the Canadian Assembly and to the Ministers of the Crown, of the rights to be asserted by the one and conceded by the other. "The charges and well-founded complaints (observed the House) of the Canadians, before that august senate, were referred to a Committee of the House of Commons indicated by the colonial Minister, that Committee exhibiting a striking combination of talent and patriotism, uniting a general knowledge of public and constitutional law to a particular acquaintance with the state of both the Canadas, formerly applauded almost all the reforms which the Canadian people and their representatives demanded and still demand. After a solemn investigation, after deep and prolonged deliberation, the Committee made a report, an imperishable monument of their justice and profound wisdom, an authentic testimonial of the reality of our grievances and of the justice of our complaints, faithfully interpreting our wishes and our wants. Through this report, so honourable to its authors, His Majesty's Government has become better than ever acquainted with the true situation of this Province, and can better than ever remedy existing grievances and obviate difficulties for the future." Language more comprehensive or emphatic could not have been found in which to record the acceptance by the House of Assembly of the report of 1828 as the basis on which they were content to proceed for the adjustment of all differences. The questions in debate became thenceforth, by the common consent of both parties, reducible to the simple inquiry whether the British Government had, to the fullest extent of their lawful authority, faithfully carried the recommendations of the Committee of 1828 into execution.

On a review of all the subsequent correspondence, Lord Aberdeen finds himself entitled to state, that in conformity with the express injunctions and the paternal wishes of the King, His Majesty's confidential advisers have carried into complete effect every suggestion offered for their guidance by the Committee of the House of Commons.

It is necessary to verify this statement by a careful and minute comparison between the advice received and the measures adopted. To avoid the possibility of error, the successive recommendations of the Committee of 1828 shall be transcribed at length, with no other deviation than that of changing the order in which the topics are successively arranged in their report; an order dictated by considerations of an accidental and temporary nature, but otherwise inconvenient as postponing many of the weightier topics to some of comparatively light importance.

First, then, the report of 1828 contains the following advice of the Canada Committee on the subject of finance: "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 Provinces 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." "If the officers above enumerated are placed on the footing recommended," (that is, in a state of pecuniary independence on the Assembly) "your Committee are of opinion that all the revenues of the Province, except the territorial and hereditary revenues, should be placed under the control and direction of the Legislative Assembly."

The strict legal right of the Crown to appropriate the proceeds of the Statute 14 Geo. 3, c. 88, being thus directly maintained, the renunciation of that right was recommended on condition that "the Governor, the members of the Executive Council, and the judges should be made independent of the annual votes of the House of Assembly for their respective salaries." What then, has been the result? His Majesty has renounced these his acknow-

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ledged legal rights, but has not stipulated for the performance, on the part of the Assembly, of the conditions thus imposed upon them, and to the present moment that condition remains unfulfilled. By the British Statute 1st & 2d Will. 4, c. 73, which was introduced into Parliament by His Majesty's then confidential advisers, the appropriation of the revenues of the 14th Geo. 3 is transferred to the Assembly absolutely, and without either that qualification which the Committee proposed, or any other. Here, then, it cannot be denied that their advice has been followed, not only with implicit deference, but in a spirit of concession which they did not contemplate.

2. On the subject of the representation of the people in Lower Canada, the opinion of the Committee was expressed in the following terms: "Your Committee are now desirous of adverting to the representative system of Lower Canada, with respect to which, all parties seem to agree that some change should take place." After detailing the various causes which had led to an inequality in the number of the members of the Assembly in favour of the French inhabitants of the seigneuries, and therefore to the prejudice of the inhabitants of English origin in the townships, the Committee passed from the subject, with the following general remark: "In providing a representative system for the inhabitants of a country which is gradually comprehending within its limits newly peopled and extensive districts, great imperfections must necessarily arise from proceeding in the first instance on the basis of population only. In Upper Canada a representative system has been founded on the compound basis of territory and population. This principle, we think, might be advantageously adopted in Lower Canada."

It was with the entire concurrence of His Majesty's Government that the Legislature of Lower Canada assumed to themselves the duty of giving effect to this part of the advice of the Committee. That report had laid down the general principle, that, with one exception, "all changes, if possible, be carried into effect by the local Legislature themselves," and to that principle the Ministers of the Crown adhered, even in a case where the dominant majority of the Assembly had an interest directly opposed to that of the great body of English inhabitants, for whose special relief the new Representation Bill was to be enacted. Such a Bill was accordingly passed, and was reserved for the signification of His Majesty's pleasure. It actually received the Royal assent, and is, at this day, the law of the Province.

In this case also the concessions made to the Canadian inhabitants of French origin were far greater than the authors of the report of 1828 could have had in contemplation. The Upper Canadian principle, of combining territory and population as the basis of elective franchise, was not adopted in Lower Canada; the Assembly substituted for it a new division of the country, of which the effect has been to increase rather than to diminish the disproportion between the number of members returned by the English and those representing the French Canadian interest. This result of the Bill was distinctly foreseen by the official advisers of the Crown, and it became the subject of grave deliberation whether His Majesty should be advised to acquiesce in a scheme which followed the advice of the Canada Committee, so far indeed as to effect a material change in the representative body, and so far as to give to the English settlers a few more voices in the Assembly, but not so far as to secure to them any additional weight in the deliberations of that House. It is not within the object of this Minute to defend or to explain the motives of the ultimate decision in favour of the Bill. For the present purpose it is enough to say, that the acceptance of it gave to the Canadians of French origin far more than the report of 1828 authorized them to expect.

3. Inferior only in importance to the topics already noticed is that of the independence of the judges, respecting which the following passage may be extracted from the report of 1828: "On the other hand, your Committee, while recommending such a concession on the part of the Crown," (the concession, that is, of the revenue,) "are strongly impressed with the advantage of rendering the judges independent of the annual votes of the House of Assembly for their respective salaries. Your Committee are fully aware of the objections in principle which may be fairly raised against the practice of voting permanent salaries to judges who are removable at the pleasure of the Crown; but being convinced that it would be inexpedient that the Crown should be deprived of that power of removal, and having well considered the public inconvenience which might result from their being left in dependence upon an annual vote of the Assembly, they have decided to make the recommendation in their instance of a permanent vote of salary."

Thus the Canada Committee of 1828 were of opinion that the judges ought to be independent of the Assembly for their incomes, but ought to continue liable to removal from office at the pleasure of the Crown. Yet, so far have the British Government been from meting out relief to the Province grudgingly, or in any narrow spirit, that they have left nothing unattempted which could secure to the judges, not merely that pecuniary independence which the Committee advised, but that independent tenure of office also which their report expressly dissuaded. In the adjacent Province of Upper Canada, both objects have been happily accomplished. In his despatch of the 8th April 1831, No. 22, the Earl of Ripon explained to Lord Aylmer the course of proceeding which had been adopted for asserting the independence of the judges in this kingdom, and signified to the Governor His Majesty's commands to avail himself of the earliest opportunity for proposing to the Legislative Council and Assembly of Lower Canada the enactment of a Bill, declaring, that the commissions of all the judges of the Supreme Courts should be granted to endure during their good behaviour, and not during the Royal pleasure; and Lord Aylmer was further instructed, in the name and on behalf of His Majesty, to assent to a Bill for carrying that object into effect. Lord Ripon, however, declared it to be, "of course, an essential condition of this arrangement that an adequate and permanent provision should be made for the judges." It remains to state the result. A Bill was passed by the House of Assembly, by which, indeed

the tenure of the judicial office was made to depend on the good behaviour of the judges, and by which a provision, adequate in amount, was made for them. But that provision was so granted as to be liable to be diminished or taken away by the annual votes of the House of Assembly. To this measure, so popular in its general character or pretensions, were also "tacked," to adopt the usual parliamentary phrase, clauses, by which a right to dispose of the territorial revenue of the Crown was asserted, and by which all the public officers in the Colony, the Governor himself not being expressly excepted, were made amenable to a tribunal to be constituted for the trial of all impeachments preferred by the representatives of the people. Such was the return made to an act of grace, which the Canada Committee themselves had expressly dissuaded. To have acquiesced in it would have involved a sacrifice of whatever is due to the dignity of the King, and to the liberties of His Majesty's subjects. His Majesty's assent was therefore withholden, though not without the expression of the deepest regret, and the most distinct offer to assent to any other Bill for establishing the independence of the judges which should be exempt from such objections. The House of Assembly, however, have never since tendered an act of that nature for the acceptance of His Majesty, or of His Majesty's representative in the Province.

4. The next topic is that of the composition of the Legislative and Executive Councils, respecting which the following suggestions occur in the report of 1828: "One," it is said, "of the most important subjects to which their inquiries have been directed has been the state of the Legislative Councils in both the Canadas, and the manner in which these assemblies have answered the purposes for which they were instituted. Your Committee strongly recommend that a more independent character should be given to these bodies; that the majority of their members should not consist of persons holding offices at the pleasure of the Crown; and that any other measures that may tend to connect more intimately this branch of the constitution with the interest of the colonies would be attended with the greatest advantage. With respect to the judges, with the exception only of the Chief Justice, whose presence on particular occasions might be necessary, your Committee entertain no doubt that they had better not be involved in the political business of the House. Upon similar grounds it appears to your Committee that it is not desirable that judges should hold seats in the Executive Council."

With what scrupulous exactness these recommendations have been followed will now be shown. With respect to the judges, Lord Ripon, in the despatch of the 8th of February already quoted, conveyed to Lord Aylmer His Majesty's commands to signify to the Legislative Council and Assembly His Majesty's settled purpose to nominate on no future occasion any judge as a member either of the Executive or of the Legislative Council of the Province. It was added, that the single exception to that general rule would be, that the Chief Justice of Quebec would be a member of the Legislative Council, in order that the members of that body might have the benefit of his assistance in framing laws of a general and permanent character. But His Majesty declared his purpose to recommend even to that high officer a cautious abstinence from all proceedings by which he might be involved in any political contentions of a party nature.

It was not in the power of the King's Government to remove from the Legislative Council any of the judges who had already been appointed to be members of that body, because the terms of the Constitutional Act secure to them the enjoyment of their seats for life. But in a private despatch of the same date, the four gentlemen who had at that time combined the judicial character with seats in the Council were earnestly exhorted to resign their places as councillors, and were assured that nothing should be wanting to rescue them from any possibility of misconstruction as to the motives by which that advice had been dictated or obeyed. In point of fact, it was not accepted; but the judges unanimously agreed to withdraw from all active interference in the business of the Council, and have never since attended its sittings. The Chief Justice indeed, as was recommended by the Canada Committee, forms the single exception; but even that gentleman, as far as the information of this office extends, has confined his interference within the limits prescribed to him by the Committee, and by the Earl of Ripon.

The principles laid down by the Committee of 1828 for regulating the composition of the Legislative Council have been not less strictly pursued in every other respect. Since the date of their report 18 new members have been appointed. Of that number, there is not one who holds any office or place of emolument at the pleasure of the Crown, or who is in any other manner dependent upon the favour of His Majesty or of his official advisers. Of the 18 new members, 10 are of French origin. The total number of councillors is 35, of whom only seven hold public offices. Amongst them is the Bishop of Quebec, who is, in the fullest sense of the term, independent of the Crown. The Chief Justice, whose dependence is altogether nominal, is another. Of the whole body of 35 members, there remain therefore but five over whom the Executive Government can, with any reason or plausibility, be said to possess any direct influence.

It is, therefore, not without a reasonable confidence that the words in which the Committee of 1828 suggest the proper composition of the Legislative Council may be adopted as precisely descriptive of the manner in which it is actually composed: "A more independent character" has been given to that body. The "majority of the members does not consist of persons holding office at the pleasure of the Crown." This branch of the constitution has been connected "more intimately with the interest of the province" by the addition of a large body of independent Canadian gentlemen.

But the case may be carried still farther, and it may be shown that, in respect to the Councils, the efforts of Lord Aberdeen's predecessors have left behind them the advice of the Canada Committee. The Executive Council has also been strengthened by the addition

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of three members of French origin. A seat was offered to Mr. Neilson, the most prominent of the delegates from the House of Assembly of 1828, and to Mr. Papineau, the Speaker of that House. It need scarcely be said that it was impossible to give a more decisive proof of the wish of the Ministers of the Crown that the composition of the Canadian Councils should be acceptable to the great majority of the people.

5. The next in order of the recommendations of that Committee relates to the clergy reserves, a subject on which they employed the following language: "As your Committee entertain no doubt that the reservation of these lands in mortmain is a serious obstacle to the improvement of the colony, they think every proper exertion should be made to place them in the hands of persons who will perform upon them the duties of settlement, and bring them gradually into cultivation."

Although the views of the Committee were thus limited to the improvement of the clergy reserves, the Government advanced to the redress of the evil indicated in the report, by a measure not only far more decisive, but eminently remarkable for the confidence it expressed in the Provincial Legislature. The Constitutional Act having authorized His Majesty, with the advice of the Legislative Council and Assembly, to vary or repeal any of the provisions therein made for the allotment and appropriation of lands for the support of the Protestant clergy, Lord Ripon, availing himself of that enactment, proposed that the power of repeal should be exercised by those bodies, and should be accompanied with a declaration that the reserve lands should merge in the general demesne of the Crown. The object of this proposal was to bring the reserves within the reach of the general rules under which all the waste lands of the Province are progressively sold to the highest bidder. To prevent any possible misconception of the views of His Majesty's Government, the draught of a Bill for the accomplishment of this design was transmitted to Lord Aylmer, with instructions to give his assent, if such a law should be presented for his acceptance. To obviate the risk of offence being given, by suggesting to the House of Assembly the exact language, as well as the general scope of a measure to originate with them, Lord Aylmer was directed to proceed with the most cautious observance of the privileges of that body, and of all the constitutional forms. Anticipating the contingency of the measure being adopted in substance, but with variations in the terms, Lord Ripon further stated that in that event the Bill was not to be rejected by the Governor, but was to be specially reserved for the signification of His Majesty's pleasure.

In obedience to these directions, the Bill was introduced into the House of Assembly, but did not pass into a law. That it would have effectually removed the grievance pointed out by the Canada Committee has not been disputed, nor can the Ministers of the Crown be held in any sense responsible for the continuance of an evil for which they had matured so complete a remedy. The only explanation which has ever been given of the failure of the proposal is, that the Solicitor-general, Mr. Ogden, had used some expressions, whence it was inferred that His Majesty's Government would reject the Bill if altered in a single word. It is scarcely credible that this should be an accurate surmise of the real cause of the loss of the Clergy Lands Appropriation Bill. It is not to be believed that the Assembly of Lower Canada would have rejected an unobjectionable proposal for the redress of a grievance of which complaint had been long and loudly made, for no other reason than that a public officer, not of the highest rank or consideration, had used some casual expression in which the ultimate views of His Majesty's advisers were inaccurately explained. To the Governor application could have immediately been made for more authentic information; and in fact the tenor of the despatch which had been received by Lord Aylmer was perfectly well known throughout the Province to every person who felt any interest on the subject. The measure has never since been revived; and it must be therefore assumed that the Assembly are less anxious than Lord Ripon supposed for the removal of this obstruction to agriculture and internal improvement. Be that as it may, the British Government are completely absolved from the responsibility thrown upon them by this part of the report of the Canada Committee.

6. That body proceeding to other subjects connected with the wild lands of the Province, expressed their opinion that "it might be well for the Government to consider whether the Crown reserves could not be permanently alienated, subject to some fixed moderate reserved payment, either in money or in grain, as might be demanded, to arise out of the first 10 or 15 years of occupation." They add, "that they are not prepared to do more than offer this suggestion, which appears to them to be worthy of more consideration than it is in their power to give to it; but that in this, or in some such mode, they are fully persuaded the lands thus reserved ought, without delay, to be permanently disposed of."

In pursuance of this advice, Lord Ripon directed the sale of the Crown reserves throughout the Province, as opportunity might offer, precisely in the same manner as any other part of the Royal demesne. The system has undergone an entire change, and the Crown reserves considered as distinct allotments, left in their wild state to draw a progressive increasing value from the improvement of the vicinity, have no longer any existence.

7. Another abuse connected with the wild lands of Lower Canada was noticed by the Committee in the following language: "One of the obstacles which is said greatly to impede the improvement of the country is the practice of making grants of land in large masses to individuals who had held official situations in the colony, and who had evaded the conditions in the grant, by which they were bound to provide for its cultivation, and now wholly neglect it. Although powers have been lately acquired by the Government to estreat those lands, and although we think that, under certain modifications, this power may be advantageously used, we are nevertheless of opinion that a system should be adopted similar to that

that of Upper Canada by the levy of a small annual duty on lands remaining unimproved and unoccupied; contrary to the conditions of the grant.

The remedial measure of a tax on wild land, which is suggested in the preceding passage, could of course originate only with the representatives of the people, and the House of Assembly have not indicated any disposition to resort to that mode of taxation. To such a Bill, if tendered by them, His Majesty's assent would have been cheerfully given; yet the King's Government did not omit to avail themselves of all those remedial powers with which the Crown is intrusted. It is little to say, (though it may be stated with the strictest truth) that since the date of the report the system reprobated by the Committee, of granting land in large masses to individuals, has been entirely discontinued; it is more material to add, that this change in practice is the result of a series of regulations established, on Lord Ripon's advice, in Lower Canada, and indeed throughout all the other British Colonies. The system of gratuitous donations of land has been abandoned absolutely and universally, and during the last three years all such property has been disposed of by public auction to the highest bidder, at such a minimum price as to insure the public at large against the waste of this resource by nominal or fictitious sales. This is not the occasion for vindicating the soundness of that policy, which, however, if necessary, it would not be hard to vindicate. It is sufficient for the immediate purpose of this Minute to have shown that on this as on other topics the Ministers of the Crown did not confine themselves to a servile adherence to the mere letter of the Parliamentary recommendation, but embraced and gave the fullest effect to its genuine spirit.

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8. The Committee sought to relieve the Province, not only from the evils of improvident reservations and grants of wild lands, but from those incident to the tenures on which the cultivated districts are holden. The following passages on this subject appear in their report: "They do not decline to offer as their opinion that it would be advantageous that the declaratory enactment in the Tenures Act respecting lands held in free and common soccage should be retained. Your Committee are further of opinion that means should be found of bringing into effective operation the clause in the Tenures Act which provides for the mutation of tenure; and they entertain no doubt of the inexpediency of retaining the seigneurial rights of the Crown, in the hope of deriving a profit from them. The sacrifice on the part of the Crown would be trifling, and would bear no proportion to the benefit that would result to the colony from such a concession. The Committee cannot too strongly express their opinion that the Canadians of French extraction should in no degree be disturbed in the peaceful enjoyment of their religion, laws, and privileges, as secured to them by the British Acts of Parliament; and so far from requiring them to hold lands on the British tenure, they think that when the lands in the seigneuries are fully occupied, if the descendants of the original settlers shall still retain their preference to the tenure of Fief et Seigneurie, they see no objection to other portions of unoccupied lands in the Province being granted to them on that tenure, provided that such lands are apart from, and not intermixed with the townships."

The British Government are again entitled to the claim of having to the utmost possible extent regulated their conduct by the language, and still more by the spirit of this advice.

No application has been made for the creation of a new seigneurie, as indeed the period contemplated by the Committee when the seigneurial lands would be fully occupied still seems very remote. It is almost superfluous to add that no attempt has been made to superinduce upon those lands any of the rules of the law of England.

The Crown has also been prompt to bring into the most effective operation the clause of the Canada Tenures Act which provides for the mutation of tenures; but no lord or censitaire having hitherto invoked the exercise of the powers of the Crown, they have, of necessity, continued dormant. Respecting the soccage lands, some explanation seems necessary. The general principle adopted by the Committee, in the passage already quoted, is, that the inhabitants, both of French and of British origin, should respectively be left in the enjoyment of the laws regulating the tenures of their lands derived from their different ancestors, and endeared to either party by habit, if not by national prejudices. It has already been shown that the French Canadians have enjoyed the benefit of this principle to the fullest possible extent; in the anxiety which has been felt to gratify their wishes, it may not be quite clear that equal justice has been rendered to the inhabitants of British descent. The maintenance of so much of the Canada Tenures Act as rendered the soccage lands inheritable and transmissible according to English law, was most unequivocally recommended in the extracts already made from the report. The Provincial Legislature, however, in their session of 1829, made provision for the conveyance of such lands in a manner repugnant to this British Statute; of course His Majesty could not be advised to assent to a law which directly contravened an Act of Parliament. Such, however, was the anxiety of the King's Ministers to avoid every needless cause of jealousy, that a Bill (1 Will. 4. c. 20) was introduced into Parliament by Lord Ripon, and passed into a law, in order to relieve His Majesty from this difficulty. The Canadian Act was then accepted; nor was this all: striving to multiply to the utmost possible extent every proof and expression of respect and confidence towards the Provincial Legislature, the Government introduced into the British Statute, which has been last mentioned, a further enactment, of which the effect was to absolve the Canadian Legislature in future from every restraint laid upon them by any Act of Parliament regulating the various incidents of the soccage tenure in the Province. The barriers erected for the defence of the British settlers by the caution

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of Parliament in the years 1791 and 1826, were thus overthrown, in order that there might be the fewest possible exceptions to the principle of confiding to the Canadian Legislature the regulation of the internal interests of Lower Canada. No one will deny that this unsolicited concession was made in the spirit of the most large and liberal acceptance of the advice of the Canada Committee, so far at least as the views and interests of the dominant majority of the House of Assembly are concerned.

9. The next is the subject of the Jesuits' estates, in reference to which the views of the Committee of 1828 are expressed as follows: "With respect to the estates which formerly belonged to the Jesuits, your Committee lament that they have not more full information, but it appears to them to be desirable that the proceeds should be applied to the purposes of general education."

Far, indeed, beyond the letter of this advice did the concessions made by His Majesty, on the advice of Lord Ripon, proceed: not only were the Jesuits' estates "applied to purposes of general education," but the Provincial Legislature were authorized to determine what specific purposes of that kind should be preferred, and the proceeds of the estates were placed for that purpose unreservedly under their control. No suggestion has been made impeaching the fulness of this concession, except as far as respects certain buildings occupied for half a century past as a barrack; even if a rent should be payable by the Crown for the use of those barracks (the single question admitting of debate), it would be idle on that ground to deny either the importance of the concession made, or the almost unbounded confidence in the House of Assembly, perceptible in the form and manner in which the Crown renounced to them, not merely a proprietary right, but even an administrative function.

10. To the positive recommendations which have already been considered, succeeds another, of which the end is rather to dissuade than to advise the adoption of any specific measure: "The Committee (it is said) are desirous of recording the principle which, in their judgment, should be applied to any alterations in the constitutions of the Canadas, which were imparted to them under the formal Act of the British Legislature of 1791. That principle is to limit the alterations which it may be desirable to make by any future British Acts, as far as possible, to such points as, from the relation between the mother country and the Canadas, can only be disposed of by the paramount authority of the British Legislature, and they are of opinion that all other charges should, if possible, be carried into effect by the local Legislatures themselves, in amicable communications with the local Government."

So rigidly has this principle been observed, that of two Acts of Parliament which since 1828 have been passed, with reference to the internal concerns of the Province, the common object has been so to enlarge the authority of the Provincial Legislature as to enable his Majesty to make, with their concurrence, laws, to the enactment of which they were positively incompetent. The Acts in question are those already noticed, by which the revenues of Geo. 3 were relinquished, and the regulation of soccage tenures was transferred to the Governor, Council, and Assembly.

11. "The Committee," again to borrow their own words, "recommended for the future that steps should be taken, by official securities, and by a regular audit of the accounts, to prevent the recurrence of losses and inconveniences to the Province, similar to those which had occurred in Mr. Caldwell's case," and, as connected with this branch of the inquiry, they recommended that "precautions of the same nature should be adopted with regard to the sheriffs."

In reference to these suggestions, Sir George Murray proposed to the House of Assembly, and Lord Ripon repeated the proposal, that the public accountants should pay their balances, at very short intervals, into the hands of the Commissary-general, tendering the security of the British Treasury for the punctual repayment of all such deposits. The scheme embraced a plan for a regular audit and for the punctual demand of adequate securities. Sir James Kempt and Lord Aylmer were successively instructed to propose to the Legislative Council and Assembly the enactment of such a law. The proposal was accordingly made to the Assembly in the year 1829, and was repeated in the year 1832. On each occasion it was the pleasure of the House to pass it by in silence. That they had good reasons for their conduct it would be unjust and indecorous to doubt. Those reasons, however, remain to this moment completely unknown to the Executive Government, who, having exhausted all their authority and influence in a fruitless attempt to give effect to this part of the Canada Committee's recommendations, cannot, with any reason, be held responsible if they still have failed to produce the advantage contemplated to the Province at large.\*

12. A further

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\* They have not, however, abstained from such measures as were within their own power. They have established a fire-proof vault with three keys, held by three separate officers of high rank, all of whom must be present whenever it is opened, and they have provided that the Receiver-general shall not hold in his hands any balance exceeding 10,000 £. without depositing it in this vault, and that once at least in every year the contents of the vault shall be inspected or reported on by five persons named by the Governor for the purpose. They have also taken security from the Receiver-general to the extent of 10,000 £., with two sufficient sureties, and have required him to render statements of his accounts on the 1st of January, 1st of April, 1st of July, and 1st of October in every year.



12. A further recommendation of the Committee is conveyed in the report in the following terms: "Your Committee also beg leave to call the particular attention of the Government to the mode in which juries are composed in the Canadas, with a view to remedy any defects that may be found to exist in the present system."

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Here again the Government pressed upon the House of Assembly the importance of giving effect to the views of the Committee; and, in fact, a law has received the Royal Assent, having for its object the improvement of the jury system—an object which has been pursued by those methods which the House of Assembly themselves devised or adopted.

13. The report proceeds to recommend, "That the prayer of the Lower Canadians for permission to appoint an agent, in the same manner as agents are appointed by other colonies which possess local legislatures, should be granted."

His Majesty's Government have accordingly repeatedly authorized the Governor to assent to any Bill which might be passed for that purpose. No such Bill has, however, been presented for Lord Aylmer's acceptance. The Assembly, in opposition to the advice of the Committee, that the habits of other colonies should be followed as a precedent, have chosen to nominate, by resolutions of that House alone, gentlemen deputed to represent them in this kingdom, but who have not, as in other colonies possessing legislative assemblies, been appointed by an Act of the entire Legislature.

14. Upon the most careful perusal of the report of 1828, no other recommendations can be found addressed to the King's Government, although the Committee, addressing themselves in that instance rather to the local Legislature, have advised that mortgages should be special, and that in proceedings for the conveyance of lands, the simplest and least expensive forms of conveyance should be adopted, upon the principles of the law of England; that form which prevails in Upper Canada being probably, under all circumstances, the best which could be selected; and that the registration of deeds relating to soccage lands should be established as in Upper Canada. "In addition," it is added, "to these recommendations, it appears to be desirable that some competent jurisdiction should be established to try and decide causes arising out of this description of property," (that is, the soccage lands,) "and that circuit courts should be instituted within the townships for the same purposes."

In these passages, the design of the Committee was to administer to the relief of the settlers of English origin, and their claims were pressed by Sir George Murray on the attention of the Assembly. Some advance has been accordingly made towards the establishment of a registry of deeds and of local courts in the townships. Respecting the law of mortgages, and the forms of conveyancing, it does not appear that the Assembly have hitherto interposed for the relief of that part of the constituent body.

Concluding at this point the comparison between the advice tendered to the Government, and the measures adopted in pursuance of it, it may be confidently asserted that the general statement made at the commencement of this Minute has been substantiated. To the utmost limit of their constitutional power and legitimate influence, successive Administrations have earnestly and successfully laboured to carry the report of 1828 into complete effect in all its parts. It has already been shown with how cordial an acquiescence that report was received by the House of Assembly, with what liberal eulogies the talent, the patriotism, the knowledge and the intimate acquaintance with Canadian affairs of its authors were commended; how that document was hailed as the faithful interpretation of the wishes and wants of the Canadian people; and how the British Government were called upon by the House of Assembly to look to that report as their guide in remedying existing grievances, and obviating difficulties for the future. That this guide should have been studiously followed, that its suggestions should have been invariably construed and enforced, with no servile adherence to the letter, but in the most liberal acceptance of its prevailing spirit, and yet that such efforts should have been unavailing to produce the expected conciliation, may well justify the deepest regret and disappointment.

(signed) *Aberdeen.*

Enclosure, No. 3, in Lord Aberdeen's Despatch to Lord Amherst, 2d April 1835.—(No. 2.)

A MINUTE, explanatory of the Resources, and of the present state of the Revenues of Lower Canada.

THE revenue of the Province arises from two distinct sources, viz. the statute law, British or Canadian, and the inherent prerogative of the Crown.

The Acts of Parliament are, the 14 Geo. 3, c. 88; 3 Geo. 4, c. 119; and 3 & 4 Will. 4, c. 59.

The Acts of the Assembly are, 33 Geo. 3, c. 8; 35 Geo. 3, c. 8; 35 Geo. 3, c. 9; 41 Geo. 3, c. 14; 51 Geo. 3, c. 12; 53 Geo. 3, c. 1; 55 Geo. 3, c. 3; 59 Geo. 3, c. 4; 2 Geo. 4, c. 1; 4 Geo. 4, c. 10.

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To a correct understanding of the case, it is necessary very shortly to recapitulate the effect of all these different Statutes.

1. The British Statute 14 Geo. 3, c. 88, as has been already seen, imposes duties on spirits and molasses. These duties were a commutation for others, much more burthensome and extensive, formerly paid to the King of France. They are declared applicable to the charges of the civil government and the administration of justice, in such manner as the Lords of the Treasury should appoint.

2. The British Statute 3 & 4 Will. 4, c. 59, is the Statute which regulates the trade of all the colonies. For the present purpose, it is enough to say that it imposes duties upon British spirits, and upon foreign goods of every description, imported into the Province. The produce of these duties must be appropriated by the Provincial Assembly.

3. The Provincial Statute 33 Geo. 3, c. 8, imposed certain additional duties on wine, which are expressly appropriated to the payment of the expenses of the Legislative Council and Assembly.

4. The Provincial Statute 35 Geo. 3, c. 8, imposed a duty upon hawkers and publicans. The produce of this duty was appropriated towards the administration of justice, and the support of the civil government of the Province. If the produce in any year exceeded 5,555 l. 11 s. 1½ d. the surplus was to be appropriated by the Legislature.

5. The Provincial Statute 35 Geo. 3, c. 9, granted additional duties on spirits, molasses, syrup, sugar, coffee, tobacco, cards, and salt. The proceeds of these duties were appropriated in the same manner as those of the last-mentioned Act.

6. The Provincial Statute 41 Geo. 3, c. 14, imposed additional duties on tobacco. In this Act it is declared that the produce is to be applied by His Majesty towards further defraying the charges of the civil government.

7. The Provincial Statute 51 Geo. 3, c. 12, imposed certain wharfage dues. The produce was appropriated towards the improvement of the navigation of the St. Lawrence.

8. The Provincial Statute 53 Geo. 3, c. 1, imposed certain duties on sugar, tobacco, snuff, salt, wines, spirits, publicans and billiard-tables. The produce of the duties was to be appropriated by the Provincial Legislature. This Act was to be in force only till March 1815.

9. The Provincial Statute 55 Geo. 3, c. 3, granted certain duties on tea, spirits, molasses, and syrup, and on goods sold by auction. The appropriation of these duties was expressly reserved to the Provincial Legislature.

10. The Provincial Statute 59 Geo. 3, c. 4, imposed certain duties upon tobacco, leather, and spirits, the produce of the United States. The produce of these duties was reserved to the appropriation of the Provincial Legislature. The Act was to continue in force till May 1821.

11. The Provincial Statute 2 Geo. 4, c. 1, continued the last-mentioned Act till May 1824, and altered in some respects the rate and amount of the duties. Nothing was said respecting appropriation, which, of course, therefore followed the rule of the Act, of which this was a continuation.

12. The Act 4 Geo. 4, c. 10, imposed certain additional duties on leather imported from the United States. This duty being an enlargement of the duties granted by the two last-mentioned Acts, was subject to the same rule of appropriation.

13. The British Statute 3 Geo. 4, c. 119, which is commonly called the Canada Trade Bill, declared that all the duties which were payable under any Acts of Lower Canada should be payable and levied until Acts were passed for the repeal of such duties. The effect of this enactment was to render permanent the three temporary Acts of the Province, of 1819, 1822, and 1824.

14. 1 & 2 Will. 4, c. 73, transferred to the Legislative Council and Assembly of the Province the right of appropriating the net proceeds with the duties arising from 14 Geo. 3, c. 88.

Such being the various sources of the revenue of the Province, the following Table marked (A.) will show what was the actual produce in the years 1831 and 1832, and the following Table marked (B.) will show for the years 1833 and 1834 a comparative statement of the proceeds of each of the different sources from which the territorial and hereditary revenue is derived.

(signed) *Aberdeen.*

(A.)

COMPARATIVE YEARLY STATEMENT of the REVENUE for the Years 1831 and 1832.

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Specify each separate Tax or Duty.	Amount collected in the Year 1831, in Pounds Sterling.	Amount collected in the Year 1832, in Pounds Sterling.	Increase in Pounds Sterling.	Decrease in Pounds Sterling.
	£. s. d.	£. s. d.	£. s. d.	£. s. d.
Casual and Territorial Revenue	4,581 11 -	4,006 15 8	- - -	574 15 4
Duties under Imperial Act, 14 Geo. 3.	34,954 19 4	30,998 9 2	- - -	3,956 10 2
Licences under ditto - -	2,448 - -	2,532 12 -	84 12 -	-
Licences on Billiard Tables, Provincial Act, 41 Geo. 3.	45 - -	67 10 -	22 10 -	-
Duties on Tobacco under ditto	4,934 18 2	5,527 9 3	592 11 1	-
Fines and Forfeitures - -	310 19 9	681 16 11	370 17 2	-
Duties under Provincial Act, 33 Geo. 3.	2,115 12 -	2,566 11 8	450 19 8	-
Ditto under 35 Geo. 3 - -	30,471 17 2	30,021 18 7	- - -	449 18 7
Licences under ditto - -	2,737 16 -	2,809 16 -	72 - -	-
Duties under 53 Geo. 3 - -	25,854 6 9	27,844 4 8	1,989 17 11	-
Ditto under 55 Geo. 3 - -	29,302 9 10	29,951 2 9	648 12 11	-
Ditto under Imperial Act, 6 Geo. 4, c. 114.	6,421 8 3	6,643 11 6	222 3 3	-
Ditto under Provincial Acts 45 & 51 Geo. 3, and 2 Geo. 4.	3,545 9 8	3,519 14 6	- - -	25 15 2
Ditto under 48 Geo. 3, c. 19	22 1 -	- - -	- - -	22 1 -
Tolls on Lachine Canal - -	4,222 10 4	3,870 - -	- - -	352 10 4
Monies under Provincial Act, 4 Geo. 4, c. 21.	25 13 6	- - -	- - -	25 13 6
Duties under Imperial Act, 6 Geo. 3, c. 52.	- - -	39 17 5	39 17 5	-
Ditto under Provincial Act, 4 Geo. 4, c. 3.	66 7 8	- - -	- - -	66 7 8
Ditto on Passengers and Emigrants, under Provincial Act, 2 Will. 4, c. 17.	- - -	5,944 18 3	5,944 18 3	- (a)
Net Revenues of the Jesuits' Estates.	- - -	2,426 3 4	2,426 3 4	- (a)
<b>TOTAL - - £.</b>	<b>152,061 - 5</b>	<b>159,452 11 8</b>	<b>12,865 3 -</b>	<b>5,473 11 9</b>

(a) Cause of Increase or Decrease:—First collections under this Act. These revenues were formerly at the disposal of the Crown; but were, during the year, placed at the disposal of the Legislature.

(B.)

COMPARATIVE STATEMENT of the Proceeds of each of the different Sources from which the TERRITORIAL and HEREDITARY REVENUE is derived, for the Years 1833 and 1834.

	1833.	1834.
	Currency. £.	Currency. £.
Quints - - - - -	533	2,297
Lods et Ventes - - - - -	2,603	1,235
Commutation Fines - - - - -	2,107	76
Rent of the King's Posts - - - - -	1,200	1,200
Rents - - - - -	52	76
Forges of St. Maurice - - - - -	-	750
Droit de Relief - - - - -	-	115
<b>Total Casual and Territorial Revenue - - - - £.</b>	<b>6,495</b>	<b>5,749</b>
Crown Lands - - - - -	3,200	4,700
Timber - - - - -	1,600	3,442
<b>Total Land and Timber Fund - - - - £.</b>	<b>4,700</b>	<b>8,142</b>

[N. B. The accounts of the Casual and Territorial Revenue begin and end on the 1st January in each year, and hence the amounts do not correspond with those in Table (A.) which are made up, according to the system of the Colony, from October to October.]

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To the above revenue are to be added the payments of the British North American Land Company. By the agreement with this Company, entered into December 1833, a sum of 120,000*l.* is to be paid for certain land, in 10 annual instalments of 12,000*l.*; the first instalment to be paid within 12 months from the date of the charter. One moiety of each instalment is to be expended upon public works within the Company's land, the other to be applicable to public purposes. The unpaid portion of the 120,000*l.* to bear interest at the rate of 4 per cent. per annum, but the Company to have the option of anticipating their payments, and of thus extinguishing the interest. The following sums have already been paid out of the receipts from the Company:

	£.	s.	d.
Compensation to Ursuline Nuns for land - - - - -	2,246	14	9
Arrears to Chairmen of Quarter Sessions, due before the abolition of their offices, about - - - - -	1,150	-	-
	£.	3,396	14 9

Enclosure, No. 4, in Lord *Aberdeen's* Despatch to Lord *Amherst*, dated the 2d April 1835.—  
(No. 2.)

Minute relative to  
the 92 Resolutions  
of the House of  
Assembly.

A MINUTE comprising Notices of such of the Questions brought into discussion by the House of Assembly of Lower Canada in their 92 Resolutions as are not disposed of in Lord *Aberdeen's* Despatch above-mentioned.

IN the despatch of the 2d April, Lord *Aberdeen* has purposely confined his attention to the more considerable of the topics noticed by the House of Assembly in their Resolutions. To have engaged in a more extended inquiry, would not only have been to increase inconveniently the length of that despatch, but would have diverted Lord *Aberdeen* in writing, and Lord *Amherst* in perusing it, from those broader questions, on the decision of which the issue of Lord *Amherst's* mission must really depend. Yet in this supplementary and subordinate paper, place may conveniently be found for the discussion of the minor grievances alleged by the House of Assembly. It is not desirable that Lord *Amherst* should quit England without a distinct intimation of the views of His Majesty's Government upon any subject of which the debate can with reasonable certainty be anticipated on his Lordship's arrival in the Province.

The disregard of exact arrangement which this division of the subject into two separate documents involves will be productive of no considerable practical inconvenience. The authors of the 92 Resolutions have not thought it necessary to submit themselves to the restraint of any fixed method. The subjects embraced in them are so blended together, as to make every attempt to trace any pervading principle of order throughout the whole entirely hopeless.

It is not impossible that the real ground of complaint may in some cases have been misconceived. The style of the Resolutions is peculiar, and certainly not such as to relieve the inherent obscurity of the subject. They continually presuppose the knowledge of unexplained facts, and attribute to the reader the power of supplying the sense of indefinite allusions. Such also is the copiousness and warmth of expression, that in many cases it is difficult to discern what is the subject-matter to which the writers refer. These circumstances are noticed without the remotest approach to disrespect towards the House of Assembly, but merely to explain the apparent want of method and certainty in the following paragraphs:

1. The House of Assembly in their Resolutions 48-51 complain, in very strong terms, of the language employed in certain communications from this office, which they denounce as insults, and as a violation of their rights and privileges, and as menaces which might justify the most extreme retaliation. Although this remonstrance does not refer to the language of more than one of Lord *Aberdeen's* predecessors in this office, and although there are not wanting reasons which might render Lord *Aberdeen* an unfit interpreter of the measures of His Majesty's Government, as then administered; yet if this topic should be pressed on Lord *Amherst* as a matter of grievance, he will not hesitate to disclaim, on behalf of all those by whom the seals of this department have been successively held, the injurious construction to which their words have unfortunately been thought liable. It is a matter of notoriety that the noble person against whom the censure was more particularly directed disavows the sense ascribed to his expressions, nor indeed is it credible that any Minister of the British Crown could either intend to convey, or could entertain a meaning so entirely remote from those kind and paternal feelings by which His Majesty has ever been actuated towards every class of His Majesty's subjects in the colonial dependencies of this kingdom. It will, of course, be impossible to make any reparation for a wrong of which the existence cannot be admitted. But the complaint may not improperly suggest the necessity of extreme caution in avoiding, in all communications with the Assembly, any phrase which might be made the cause of discontent, and of giving every practicable earnest for the adoption of the most conciliatory and respectful tone towards them in future.

2. The 61st Resolution refers to the case of the Seminary of St. Sulpice. It is represented that the claims which the Crown have advanced to the seigneurie of Montreal, at present held by that college, were designed to subvert the laws of the Province. On this subject Lord *Amherst* is referred to the correspondence, of which copies are annexed for his Lordship's information. It is not only inexpedient to withhold from the House of Assembly, but most desirable

desirable to produce to them, copies of every communication which has passed between the ecclesiastics of St. Sulpice and this department, or between them and the successive Governors of this Province, on the subject of His Majesty's title to the seigneurie. This is one of those cases in which an injudicious concealment has occasioned suspicions which, had the truth been disclosed, it may reasonably be supposed would have given place to sentiments of confidence, and even of gratitude. So remote were Lord Aberdeen's predecessors in office from every wish to make an unjust, harsh, or illiberal use of the rights of the Crown to the lands claimed by the priests of the Seminary of St. Sulpice, that it would appear from the whole tenor of their instructions that they had no one object in view but to rescue a great commercial city from the thralldom of feudal tenures the most unfavourable to the growth and prosperity of trade, and that they pursued that object with an undeviating desire to render the rights of the Crown, if successfully asserted, subservient to the diffusion of education and religious knowledge, according to those views of Christian truth by which the founders of the seminary were actuated. Whatever may be thought of the propriety of maintaining the ancient feudal laws of Europe in the agricultural districts of North America, it can hardly be made the subject of a serious question, whether they are applicable to the wants of society in a city which, from its natural position and advantages, might reasonably aspire to rank amongst the first class of commercial cities on the North American continent. In fact, during the prevalence of the old feudal law in Europe, almost all the great marts of trade were specially exempted by their charters, or by the general law, from the more onerous of those restraints to which, at the present day, Montreal is subject. Nothing, therefore, is apparently more easy or complete than the defence of His Majesty's Government on this head; nor is anything wanting to the efficiency of that defence except the publicity of the whole correspondence.

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If the question of the St. Sulpice estates should be agitated during Lord Amherst's residence in Lower Canada, his Lordship will act upon the principles laid down in the instructions given by Lord Ripon on this subject; exercising, however, his own discretion as to the time and manner of asserting the rights of the Crown; or even leaving the case in its present position, if it should appear to his Lordship that the further prosecution of it would impede the settlement of the other and more considerable questions to which his attention is to be in the first place directed.

3. In the Resolutions 79-83 will be found complaints of the refusal of Lord Aylmer to issue warrants on the Receiver-general for the payment of money on the credit of the Votes of Assembly, to meet the contingent expenses of that House. The fact that the demand of the House was rejected by the Governor is admitted. The defence addressed by Lord Aylmer to them was, that he was unwilling to incur a pecuniary responsibility, against which, in the event of an Appropriation Act not being passed, he would not be indemnified; a risk which was represented as the more considerable because advances made on similar requisitions in preceding sessions still remained uncovered by any such Act of the collective Legislature. There can be no doubt that, in point of strict legal obligation, Lord Aylmer was right. He was not bound to incur any pecuniary risk for the convenience of the House of Assembly. The refusal, however, was plainly the assertion of an extreme right, or rather the exercise of an extreme precaution. It involved some failure of the confidence and respect due from the Executive Government to the popular branch of the Legislature; for the risk was imaginary, except upon a supposition injurious to the good faith and common honesty of the House of Assembly. It was of course, therefore, well understood in the Province, and scarcely denied by the Governor, that the ostensible was not the real ground of the refusal. Lord Aylmer would, beyond doubt, have authorized the necessary advance if he had not viewed the application in the light of a scheme for detaching the pecuniary wants of the House of Assembly from those of the other branches of the Government, and for providing for their own convenience, while they left all other public officers labouring under the utmost distress for the incomes they had actually earned in the public service. Without discussing the accuracy of these views, it may be sufficient for the present purpose to say that no similar considerations must be permitted to influence Lord Amherst's conduct on any similar exigency. No possible advantage which could flow from embarrassing the Assembly for money to carry on their own service would ever compensate for the injury to the public at large from a collision between the chief authorities of the Province, in which the one might seem to cast a serious doubt upon the integrity of the other. The ordinary courtesies of official communications can never be abandoned except at the serious risk, and almost certain sacrifice, of still more substantial interests. If the House of Assembly should demand, as is not improbable, some reparation for the injury which they represent themselves to have sustained by the Governor's open refusal to accept their solemn resolution as a sufficient security against the risk of issuing public money, Lord Amherst will, in whatever manner may be most consistent with respect to his immediate predecessor, express the regret of His Majesty's Government that such a decision was adopted, and will give every reasonable assurance that hereafter, in the administration of the affairs of the Province, His Majesty's representative will follow the usage of this country, by taking the votes of the House of Assembly as a sufficient pledge that any money granted in that form will, in due time, be included in an Act of Appropriation.

4. Much is incidentally said, in the course of the 92 Resolutions, respecting the improper composition of the Executive Council, and the concealment of their functions, and even of their names, from the House of Assembly, although, by the law of the Province, they act as Judges of the High Court of Appeal.

It might have been concluded, that the statement respecting the concealment of the names

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of these officers had originated in some clerical or typographical error, if there were not other reasons to think that such a complaint has been seriously preferred. That any such concealment should have been really practised, still would seem altogether incredible. It is almost superfluous to say, that it must not be continued.

Lord Amherst will cheerfully assent to a law for relieving the executive councillors from the judicial duty, for which they certainly would appear but very ill qualified.

Respecting the composition of this council, if Lord Amherst should find that it is such as to afford an undue advantage to the Canadians of English birth or origin, or that it is in any other respect unfairly constituted, his Lordship will have the means of redress in his own power, by calling to that board any properly qualified persons.

Since the Report of the Committee of 1828, the two Judges and the Receiver-general have withdrawn from this body; three French Canadians have been added to it, and Messrs. Papineau and Neilson have declined to accept seats there. Little reason would therefore seem to exist for supposing that this council is selected on any principle of partiality or undue preference. This, however, is not a question to be prejudged, but to be referred to Lord Amherst's consideration and decision.

5. In the 84th Resolution will be found a complaint of the practice of consultations between the Executive Government of the Province and the Judges upon questions which may afterwards be presented to the courts for decision. Of the existence of any such usage there is no proof, nor indeed any other than a general and indefinite statement of the fact. Lord Amherst, however, will understand that the practice of taking the extrajudicial opinion of a judge upon any question which there is the most remote reason to suppose will afterwards be agitated in the courts, is most sedulously to be avoided. Indeed it is difficult to suppose any contingency in which the provincial judges ought to be called upon to act as the private advisers of the Executive Government. To declare such an occurrence actually impossible, would perhaps be to advance unreasonably far; but it may safely be declared to be in the highest degree improbable, and any pledge which may be demanded on that subject may be readily given.

6. In the same Resolution, No. 84, a general charge occurs, of the improper interference of the Governor and of the legislative councillors in the election of members of the Assembly. In the absence of any specification or proof of the facts to which the complaint refers, nothing further can be stated, than that Lord Amherst may safely discountenance, by the most decided declarations on the part of His Majesty's Government, any opinion that they are desirous to employ the influence of the Crown in any manner whatever to impede the freedom of election. To embark in a design of that nature, in the present state of affairs in Lower Canada, would be so evidently hopeless and preposterous an attempt, that no minister, however regardless he might be supposed to be of his own duties, and of the principles of the constitution, could seriously engage in it.

7. The want of remedies in the courts of law to enforce legal demands on the Government is then noted as a grievance, although, as in several other cases, both the proof and the illustration are entirely wanting. Assuming that any such deficiency in the law of Lower Canada exists, Lord Amherst will promptly assent to any acts which may be properly framed for giving to the King's subjects the necessary remedies for the assertion of their legal rights, even in those cases in which His Majesty himself is a party concerned.

8. To the complaint that addresses preferred by the House of Assembly to the King have been permitted to remain unnoticed, the only defence which could be made must be drawn from the frequent and rapid changes which the administration of public affairs has undergone in this kingdom during the last few years. Perhaps, indeed, it might be difficult to mention a single instance of any such apparent neglect which would not admit of further explanation. But Lord Amherst may safely pledge His Majesty's Government to the most respectful punctuality in their attention hereafter to every representation which may be transmitted to the Secretary of State to be laid before the King. It may with confidence be asserted, that no vigilance will be wanting to prevent the recurrence even of a seeming cause for such a remonstrance.

9. The Provincial Administration is charged with communicating to the House in an imperfect manner the despatches of the King's Ministers, and other public documents. On a review of the proceedings of the session of 1834, it seems scarcely possible to deny that there was some foundation for this complaint. Without pursuing the subject into the detail which would be required to render it perfectly intelligible, it may be enough to state, that unreserve in meeting the demands of the Assembly for papers should be the general rule; and that when such papers relate to the receipt or expenditure of any part of the public revenue, that rule scarcely admits of an exception. On the other hand, there are documents which must be privileged from disclosure. To admit the obligation of the Governor to produce every despatch which he may receive from the Ministers of the Crown, would be to forbid any confidential communications between the King and His Majesty's representative in the Province. Upon such terms, it is impossible that any Government should be well administered, or, indeed, conducted at all. Written deliberations must, in the nature of the case, precede the decision of many questions; and in a correspondence undertaken with that view, many inquiries must be proposed, and many conjectural or hypothetical statements must be made, which, though strictly indispensable, would be unfit for general publicity. His Majesty must claim for himself, and for his officers, that degree of confidence which the relation subsisting between the King and the House of Assembly presupposes and requires.

There may also be frequently good reason for withholding from the House opinions given to the Governor by his official and legal advisers;—not, indeed, to shelter them from responsibility,

sibility, but because such opinions being, for the most part, unintelligible when detached from the statements to which they refer, it is often impossible to make a perfect disclosure of such documents, without serious prejudice to the public service, and inflicting needless pain on individuals.

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Subject only to these general exceptions, Lord Amherst will be free to divulge to the House of Assembly every document which they may wish to inspect; and will ever be prompt to avail himself of that freedom.

10. The detention of the buildings of the Jesuits' College as a barrack is the next ground of remonstrance.

If the Crown had no other title to these buildings than that of prescription, the right would be perfect; for they have been used as a barrack for more than half a century. Yet Lord Ripon, justly respecting the feelings of the ancient inhabitants of the Province, was anxious to restore them to their former religious or literary destination. His Lordship offered to surrender the barracks, with the rest of the Jesuits' estates, if any other accommodation could be provided for the troops. Considering how large is the expenditure incurred by Great Britain for the military defence of Lower Canada, and how great the benefit derived to the Province from the outlay annually there of sums of money of such great amount, it might perhaps have not unreasonably been thought that the concession so frankly made by Lord Ripon was not improperly qualified by this single reservation. Lord Amherst will adhere, in this respect, to the instructions which Lord Aylmer has already received. It is impossible to risk the health and lives of the King's troops, by leaving them unprovided with proper quarters, in a climate subject, during so large a part of the year, to a degree of cold wholly unknown in their native country. On the other hand, it is not in His Majesty's power to erect barracks at Quebec; the whole of the funds available for that or any other purpose being about to be surrendered to the House of Assembly. If that House will enable His Majesty to provide sufficient quarters for the troops in any other part of the city, His Majesty will rejoice to restore the College of the Jesuits to the pious and learned uses for which the building was originally erected.

11. The objections which have been made to the lease to Mr. Bell, of the forges of St. Maurice, scarcely admit of discussion, to any practical purpose, at present. The lease is complete and irrevocable, and will not expire till the year 1842. It may be very doubtful whether any other person could have afforded so high a rent as that which is paid by Mr. Bell; and the Crown will generally be benefited by acting towards its tenants on the same principle as that which induces private landlords to respect the outgoing tenant's claim to the good-will of the proprietor, and to a preference over other candidates for the renewal of the lease. Yet in the management of the lands in the Province, of which the net income is to be surrendered to the Assembly, the general rule should certainly be, to offer all property to public competition, and even to let lands to the highest bidder, in cases where there may be no objection to the tenant proposing himself, on the ground either of solvency, character, or skill. To establish, as an inflexible rule, that the highest bidder for a lease should always be accepted, would be a gross and evident improvidence.

12. Obstacles are said to have been needlessly raised by His Majesty's Government to the endowment of colleges by benevolent persons. If this charge refers to the suspension of His Majesty's decision upon certain reserved Bills, the answer is, that those Bills have been confirmed and finally enacted by the King. If any other proof or illustration of the supposed reluctance to promote such schemes can be adduced, it may be sufficient to say that His Majesty's Government are perfectly prepared to sanction any endowment for the instruction of youth in the Christian religion, whatever may be the peculiar views of Christianity which the founders may be desirous of inculcating; and Lord Amherst will gladly avail himself of any opportunity of proving the sincerity of this declaration.

13. It is said that the Government have denied justice in the case of accusations preferred by the House of Assembly against judges. If the statement relates to the case of Mr. Kerr, the answer is, that that gentleman does not retain his office. If there be any other case to which it is applicable, Lord Amherst will renew the proposal already made by Lord Ripon, to establish a local court for the trial of all impeachments which may be preferred by the House of Assembly against a judge.

14. Although it would not be possible to find terms more large or distinct than those employed by Lord Ripon to invite the House of Assembly to regulate the application of the clergy reserves, yet it is stated that a member of the Assembly, holding office under the Crown, declared, in his place, that the House of Assembly would not be permitted to alter one word of the Bill which had been brought in under Lord Ripon's directions. To the Bill itself there was, it is said, no objection; but under such a menace the House could not act, and the failure of the proposal is referred to that cause. Lord Ripon's despatch of November 1831 had distinctly anticipated the contingency of the Bill being modified in its progress through the Provincial Legislature, and had directed the Governor, in that contingency, not to refuse his consent, but to reserve the Bill for the signification of the Royal pleasure. Any unauthorized language of the Solicitor-general, Mr. Ogden, ought not to have weighed against this authoritative declaration. It is said, however, that his Lordship's despatch of November 1831 on this subject was not before the House; Lord Amherst will, therefore, communicate to them a copy of that despatch, and invite them to resume the consideration of the subject to which it refers.

15. Lord Aylmer's refusal to issue a new writ upon the declaration of the House that M. Mondelet's seat had become vacant, is mentioned or referred to as a grievance in the 63d Resolution. The recent enactment of a law for ascertaining in what cases the acceptance of

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an office shall vacate a seat in the House of Assembly may probably deprive this question of all importance with a view to the future. Still it may be necessary to record that His Majesty's Government adopt the more general and abstract principle by which Lord Aylmer appears to have been guided on that occasion. It is as follows: If it shall appear, upon a document issued by the authority of the House, that in their judgment a seat is vacant, and if, at the same time, there shall appear on the face of that document a statement of the ground on which that judgment proceeds, then, if the ground so alleged be insufficient in point of law to create a vacancy, the Governor is neither bound, nor is he at liberty to accede to the application of the House for a new writ. To the law alone an implicit obedience is due. Any one branch of the Legislature may err in their interpretation of it; and when a conflict arises between the rule of law on the one hand, and the resolutions of a single branch of the Legislature on the other, no officer of the Executive Government, and least of all the Governor himself, is at liberty to defer to their authority. If it be inquired by whom, then, is the law of the land to be ascertained, the answer in Canada, as in this kingdom, is, by the judges. To their decision must be brought even the pretensions of the separate branches of the Legislature, those cases being alone excepted in which the question in debate is a mere matter of privilege, of which each House is for itself the ultimate judge.

16. The last of the topics which remains to be noticed is that of the default of Sir John Caldwell. It is a subject not to be approached without very deep concern. It would be futile to deny, or to attempt to conceal that the loss in which he involved the Province resulted from the omission of His Majesty's officers to demand adequate securities for his faithful administration of the funds in his possession, and also from the neglect of the local Government to call him to a strict and frequent audit.

Under such circumstances, there are no means at the disposal of the Crown which His Majesty's Ministers would not cheerfully devote to the relief of the Province from this loss. The transfer to the Assembly of the territorial and hereditary revenue has, however, left His Majesty nothing further to concede in liquidation of this demand. The net proceeds of the payments to be made by the British North American Land Company would amount to 6,000 l. per annum, and will, it may be hoped, relieve the provincial treasury from any temporary difficulty in which it may have been involved by Sir J. Caldwell's default. Perhaps, also, the legal proceedings for the recovery of what is due from him might be urged forward with greater activity; and, at whatever expense of personal feeling, it will be necessary to enforce the demands of the public against his estate, with decision and effect.

There is one topic connected with Sir John Caldwell's case which it would be impossible to pass over in silence. That gentleman still occupies a seat in the Legislative Council. Of course, he cannot be removed from it by the Royal authority, the place being necessarily granted for life. But it is right that Sir John Caldwell should be admonished of the prudence of relinquishing his seat in the Legislative Council, or at least of totally abstaining from all interference in the deliberations of that body. It will be Lord Amherst's painful but necessary duty to convey this intimation to Sir John Caldwell, and to apprise him that his resignation would be acceptable to His Majesty, and would not be regarded as an impeachment of his character in any other sense than that in which unhappily it has already been prejudiced by his inability to make good what he owes to the public. It is almost superfluous to state that this unpleasant office will be discharged by Lord Amherst in whatever manner will be least irksome to his own feelings, because least distressing to the party more immediately concerned.

(signed) *Aberdeen.*

Enclosure, No. 5, in Lord *Aberdeen's* Despatch to Lord *Amherst*, dated the 2d April 1835.—  
(No. 2.)

My Lord,

Downing-street, 14 February 1835.

Lord Aberdeen to  
Lord Aylmer.  
14 February 1835.

IN conformity with the pledge given in my despatch of the 8th January, I can assure your Lordship that His Majesty's Government have not ceased to direct their anxious attention to the discovery of those means which appeared to offer the most reasonable prospect of bringing to a happy termination the existing differences between the House of Assembly of Lower Canada and the Executive Government of the Province. This inquiry has been undertaken with a deep sense of the importance of the object to be attained, and has been prosecuted with the most zealous and earnest endeavours to arrive at a favourable result; but I cannot disguise from your Lordship, that throughout the investigation I have found myself surrounded by no common difficulties.

Your Lordship will recollect that in the year 1828 a Committee of the House of Commons was appointed for the purpose of inquiring into the state of the Civil Government of Canada, which, after a laborious and protracted examination, embodied in their report various suggestions calculated, in their opinion, for the improvement of the administration of the affairs of the Province. This report was declared by the House of Assembly of Lower Canada to be "an imperishable monument of the justice and profound wisdom of the Committee," and to point out the certain mode of removing all the evils of which the people of Canada had complained. On a future occasion I may endeavour to show, and I hope incontrovertibly, the manner in which the recommendations of the Committee have been carried into full effect. At present I will only observe, that notwithstanding the general enthusiasm with which the appearance of the report was hailed by the House of Assembly, a spirit of discontent, from whatever cause arising, has continued gradually to increase among the members of that body, until in the last year it has burst forth with a vehemence altogether unparalleled. This spirit

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was remarkably exhibited in the ninety-two resolutions passed by the House of Assembly on the 23d February 1834. These resolutions were referred to a Committee of the House of Commons on the 25th April, and occupied their attention for a considerable time. On the 3d July the Committee closed their labours with a report, in which they did full justice to the anxiety of the Home Government to carry into execution the suggestions of the Select Committee of 1828, and declared that the endeavours of the Government to that end had been unremitting, and guided in all cases by a desire to promote the interests of the Province. The Committee delivered no opinion upon the subject-matter of any one of the resolutions submitted to their consideration; but lamented that mutual misconception appeared to prevail, which they hoped might be removed; and finally expressed their persuasion that the practical measures for the future administration of the affairs of Lower Canada might best be left to the consideration of the Government, who were responsible for their adoption and execution.

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From that period up to the present day I do not find that any measures have been undertaken in compliance with the recommendation of the Committee of the House of Commons. On the 15th of November, the day on which the dissolution of the late Administration took place, your Lordship was apprized by Mr. Spring Rice that he was prepared to transmit very full instructions on the various important points upon which it was essential for your Lordship to be informed on the approaching meeting of the Assembly of Lower Canada; but in consequence of the event which had then occurred he was prevented from making any further communication. Not being aware of the nature and purport of these contemplated instructions, your Lordship will see that I have thus been deprived of the fruits of the matured reflection of my predecessor; and that on my own accession to office I find this complicated question very much in the same situation in which it was left by the Committee of the House of Commons on the 3d of July; with this difference, however, that the difficulties of its solution have been materially aggravated by the additional delay of six months.

In adverting to this delay, your Lordship will not understand that it is with the view of imputing blame to any one, but simply for the purpose of expressing my regret that a crisis should now have arrived in which a prompt decision is rendered indispensable, and that it must be taken at a moment and under circumstances when there exists a peculiar necessity for the most careful review of all that has passed, and for the most deliberate reflection on the consequences of any step that may be adopted.

The painful situation in which your Lordship has long been placed, and the personal relation in which you have been made to stand towards the House of Assembly, form no light addition to the embarrassments which obstruct the successful termination of the question at issue. It is due, however, to your Lordship to state, that from your first assumption of the Government of Lower Canada, my predecessors in the department over which I now preside have signified their general approbation of the conduct you have pursued in the administration of the affairs of that Province. With satisfaction I add, that from an examination of your Lordship's official correspondence, commencing at the period referred to, I can see no reason to dissent from the accuracy of these opinions. At the same time it must be obvious that the exasperated feelings so prevalent in the Assembly, and the alienation of that branch of the Canadian Legislature from the Executive Government, have rendered your Lordship's position so extremely difficult as even to forbid the hope that you would be enabled to employ, with any good effect, the words of conciliation and peace.

Looking, then, at the manner of dealing with the whole of this subject, and bearing in mind the circumstances to which I have already adverted, His Majesty's Government are of opinion that the exigencies of the case demand some more decisive and expeditious mode of proceeding than is consistent with an ordinary and regular correspondence. Your Lordship's sentiments have been more than once expressed to the same effect. The King has therefore been humbly advised to select an individual possessing His Majesty's entire confidence, who has the advantage of being unconnected with past Canadian politics, and has had the opportunity, by recent personal communication with the members of His Majesty's Government, of ascertaining their views and intentions more fully and unreservedly than could be possible by means of written statements. This individual, in the capacity of His Majesty's Royal Commissioner, will repair to Lower Canada, fully instructed to examine, and, if possible, to terminate the various points of discussion, in the hope of composing all those differences which have so long agitated the Province, and which have deeply afflicted His Majesty's loyal subjects.

Without attempting to give your Lordship even an outline of the instructions of which His Majesty's Extraordinary Commissioner will be the bearer, it may be sufficient to inform you that his mission will not be so much for the purpose of promulgating any new principles of government, as of carrying into full effect that system of liberality and justice towards the people of Canada, which His Majesty has long since adopted, and which a Committee of the House of Commons recently declared had characterized the policy and conduct of all those by whom the affairs of this kingdom have been administered during the last six years. Although the result which has hitherto attended these efforts might perhaps render our hopes of the future less sanguine, it will not diminish the desire or the determination of the King to satisfy all the just claims and expectations of His Canadian subjects. They will find that His Majesty is unwearied in his endeavours to establish "an impartial, conciliatory, and constitutional Government in Canada." For this end, it will be the object of His Majesty to renew an inquiry into every alleged grievance, to examine every cause of complaint, and to apply a remedy to every abuse that may still be found to prevail; for this end there is no sacrifice he would not cheerfully make, which should be compatible with the fundamental

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Lord Aberdeen to  
Lord Aylmer.  
14 February 1835.

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fundamental principles of the Constitution itself, and with the continued existence of the Province as a possession of the British Crown.

I am unwilling to believe that the Canadian people can be insensible to feelings so truly paternal; which, as your Lordship well knows, have not been recently adopted, or on the spur of the occasion, and for which we may reasonably hope that His Majesty will be rewarded by the loyalty and attachment of all classes in the important Province now under your immediate government.

Your Lordship will communicate this despatch to the House of Assembly in the usual manner. Although without any direct information on the subject from your Lordship, I learn from other sources of intelligence that the Legislature will have met on the 27th of January. Should their sittings have been adjourned, you will take such means as may appear most proper for bringing the despatch under the knowledge of the members before the period of their re-assembling in Parliament.

I will not fail to give your Lordship timely notice of the probable arrival of His Majesty's Commissioner, in order that you may be enabled to convoke the Assembly with the least possible inconvenience to its members.

The Lord Aylmer,  
&c. &c. &c.

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

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