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COPY

OF A

DESPATCH from Lieut. Governor Sir GEORGE  
ARTHUR K.C.H. to Lord JOHN RUSSELL, dated  
Toronto, 22d October 1839; together with a  
Copy of Lord JOHN RUSSELL's Reply thereto.

Ordered to be printed 7th July 1840.

(19s.)

COPY

OF A

DESPATCH from Lieut. Governor Sir GEORGE ARTHUR K. C. H. to Lord JOHN RUSSELL, dated TORONTO, 22d October 1839; together with a Copy of Lord JOHN RUSSELL's Reply thereto.

No. 1.

(No. 204.)

COPY of a DESPATCH from Lieutenant Governor Sir GEORGE ARTHUR K.C.H. to Lord JOHN RUSSELL.

My Lord,

Government House, Toronto, 22d October 1839.

IN the concluding Paragraph of my Despatch, marked "Confidential," of the 15th instant, I submitted to your Lordship's Predecessor, that I had arrived at the Opinion that the present Parliament of Upper Canada ought not to be dissolved; stating that I would explain more at large the Grounds on which my Conclusions had been based.

No. 1.  
Sir G. Arthur  
to  
Lord J. Russell,  
22d Oct. 1839.

Having submitted the Question for the deliberate Consideration of the Executive Council, I have now the Honour to enclose a Copy of the Proceedings of that Board, containing the Reasoning by which it has been deemed advisable not to dissolve the present Parliament, until the Expiration of the Period when its Functions must necessarily cease.

I have the Honour to be, my Lord,

Your Lordship's most obedient humble Servant,

GEO. ARTHUR.

Right Hon. Lord John Russell,  
&c. &c. &c.

Enclosure in No. 1.

At a Council held at the Government House, Thursday, 17th October 1839.

Enclosure.

PRESENT,

His Excellency the Lieutenant Governor.  
The Hon. Robert Baldwin Sullivan.  
The Hon. William Allan.

The Hon. Augustus Baldwin.  
The Hon. Richard Alexander Tucker.

His Excellency was pleased to mention to the Council the Probability of his immediately proceeding to Lower Canada to confer with the Governor General, to whom his Excellency stated that Her Majesty's Government had referred him for Information regarding the important Bills reserved at the last Session of Parliament for the Signification of Her Majesty's Pleasure thereon.

And his Excellency was further pleased to state, that he would most probably have Occasion to express his Opinions on the State of the Province generally, and particularly with respect to the Expediency of a new Election, previously to the Consideration of the Measure of the Union of the Provinces. He was desirous of the Opinion and Advice of the Council upon these important Subjects.

After much Deliberation upon the Questions submitted, the Council adjourned till Tomorrow at Ten o'Clock A. M., when his Excellency was pleased to direct that a full Council should be summoned.

## CORRESPONDENCE RELATIVE TO THE

Government House, Toronto, Friday, 18th October 1839.

No. 1.  
Sir G. Arthur  
to  
Lord J. Russell,  
22d Oct. 1839.

Enclosure.

## PRESENT,

His Excellency the Lieutenant Governor.		The Hon. Augustus Baldwin.
The Hon. Robert Baldwin Sullivan.		The Hon. William Henry Draper.
The Hon. William Allan.		The Hon. Richard Alexander Tucker.

Upon the Meeting of the Council the Subject was resumed, and after an Expression of Opinion on the Part of the Members, and much Deliberation, it was agreed that a Report should be framed embodying the Opinions and Advice of the Council.

Government House, Toronto, Monday, 21st October 1839.

## PRESENT,

His Excellency the Lieutenant Governor.		The Hon. Augustus Baldwin.
The Hon. Robert Baldwin Sullivan.		The Hon. William Henry Draper.
The Hon. William Allan.		The Hon. Richard Alexander Tucker.

The following Report was read, discussed, and finally adopted:—

May it please your Excellency,

The Executive Council, in pursuance of your Excellency's Commands, have taken into Consideration the important Question of a Dissolution of the House of Assembly, and have agreed upon the following Report :

Previously to the last Elections, the Majority in the Provincial Assemblies of Lower and Upper Canada, after urging a Series of Measures involving Principles which the Representatives of the Sovereign in both Provinces felt themselves bound in Duty to resist, and after impeding the Course of Government by the most factious and unreasonable Opposition, asserted the Principle of responsible Government, or, in other Words, of Supremacy of the local Assemblies; and in both Provinces the Majorities in these Bodies prepared to carry out these Doctrines, and to force them upon the Government by refusing the ordinary Supplies.

The Council do not feel it necessary to advert to the various Questions upon which the Disputes between the Assemblies and the Government originated and proceeded, until Issue was fairly joined upon this One Point. It became evident, that after the Claim of the Assemblies should be conceded all Considerations of Right or Expediency with respect to the Policy of the Government must cease, and that the Will of the Assembly must thenceforth become the only Rule of Action.

It is perhaps too late to inquire how far the Assemblies were encouraged to assert this supreme Authority by Attempts on the Part of the Government to conciliate, by yielding up minor Points, without a positive Declaration that Executive Powers should at all events be retained by the Queen's Government unimpaired; nothing could be more natural, however, than that the Assumption of Power should be carried to any Degree of Usurpation by the Assemblies, if they imagined that it only required Perseverance and Firmness for the Accomplishment of these Objects.

When the Point came to be tested in Lower Canada, the Assembly refused to continue expiring Laws, to vote Supplies, or exercise any of their Legislative Functions.

In Upper Canada, however, the Evils of a Suspension of Legislative Proceedings were looked upon with more grave Apprehensions than in the neighbouring Colony. The Plans of public Improvement into which, in accordance with the enterprising Spirit of the People, the Province had entered deeply, and the commercial Interests of the Country, in which the whole Population were concerned, made the Refusal of the ordinary Supplies of the Government a Matter of essential Importance. The Continuance of a State of Affairs in which the Legislature would refuse to act, and the Government merely carry into effect existing Laws, was most calamitous in the Lower Province, but in Upper Canada it could not be endured.

After Sir Francis Head had assumed the Government of this Province, it became necessary for him to try, by Test of a General Election, whether the People of the Colony concurred with their Representatives for the Time being in their Endeavours, at all Risks, to force their Plan of Government upon the Executive; and after trying the Experiment whether by a modified Course of Policy the direct Trial of the Question at issue could be avoided, he openly declared his Opinions as to the Incompatibility of the Plan of local Supremacy of the Assembly with Colonial Connexion, and by a Dissolution of the Assembly he left it to the Electors to say whether they would assist in carrying on a Government on what he considered Colonial Constitutional Principles.

Several General Elections in Lower Canada had previously shown that no favourable Result could be expected there from a new Appeal to the Constituency.

In Upper Canada a large Majority of Members in favour of the Principles upheld by the Lieutenant Governor were elected.

In Lower Canada the Government, not being willing to accede to the Claims of the Assembly, continued the vain Endeavour to conciliate the opposing Party, and to exercise Executive Functions as well as they could without Legislative Assistance.

The Opportunity offered by the Vicinity of the United States for calling in Foreign Aid to bring about the Independence of the Colonies led to Rebellion in both Provinces. In

Lower Canada the great Majority were inimical to British Connexion. In the Upper Province, though the Majority were sincerely loyal, there were a sufficient Number opposed to the Views of the Government to afford a Hope of the successful Termination of a Revolt, with the Aid of American Sympathy for the Insurgents.

The Rebellion accordingly took place in both Provinces, and, although it was speedily crushed, Events occurred during its Continuance and afterwards which demonstrated that the Expectation of Foreign Interference was not unfounded, and that the discontented and disaffected in the Provinces might always look for Encouragement and Aid from their Republican Neighbours.

The main Point which gave rise to the armed Resistance to the Government, namely, the asserted Supremacy of the Majority of the Assembly, might have been considered as settled by the expressed Opinions of the Government, the Result of the Elections, the Suppression of the Rebellion, and the Expulsion of American Invaders. But to carry on the Government with the Aid of the Assembly still continued impracticable in Lower Canada; and in Upper Canada there remained some very essential Questions, upon which the Minds of the People were divided.

The most important of these Questions related to the Disposal of the Clergy Reserves. From the Time that religious Differences and sectarian Interests were brought to bear upon this Point, it was evident to many reflecting Persons in the Province that a satisfactory Settlement of the Matter could scarcely be expected in the Colony. The Decision of a Majority in favour of any Plan, difficult and almost impossible as it has ever been found to procure it, left so many discontented Complainants that nothing effectual was done to set the Question at rest; and Session after Session was spent in vain Disputations, every Day producing some new Proposition to be introduced, discussed, and rejected.

The Imperial Government having, however, left the whole Question to be settled in the Province by the Legislature, the local Government, since the Arrival of Sir Francis Head, stood aloof and neutral, refraining from making any Change in the Disposition already made, and awaited the Decision of the Legislature without any Expression of Opinion.

The various Claimants to a Participation in the Clergy Reserves, as well as those who asserted a strictly legal Right to the whole, continually urged the Executive Government to a Recognition of their respective Claims, but they have been always referred to the legislative Settlement expected to take place.

It is to be presumed that the present Assembly of Upper Canada, from the Circumstances under which it was elected, would make more strenuous Efforts than any other to bring about an Arrangement satisfactory to all Parties. They attempted this with equal Earnestness, but in vain, for Three Sessions; and at last, finding it absolutely impracticable, they agreed to refer the whole Matter to Her Majesty's Government and the Imperial Parliament.

It is true that this Reference was consented to by the smallest Majority, and at the Close of a Parliamentary Session; but it is to be considered that the Subject had been debated to Exhaustion during the greater Part of the Session, and that this was the first Approach to a practicable Solution of the Difficulty.

The Desire of the Imperial Government that the Clergy Reserve Question should be disposed of in a Manner satisfactory to the Colonists caused it to be submitted to the local Legislature. The same Desire has probably made Her Majesty's Ministers reluctant to accept a Reference on a Question which they wished the Inhabitants of the Province to settle through their own Representatives in Parliament, particularly when the Reference back to England seemed so late and so hesitatingly agreed to. At all events the Matter remains unsettled; the Decision of Her Majesty's Government is not yet known. Complaints have been made on the one Side of undue Means taken to produce the Majority upon which the Bill passed; these have been indignantly repelled on the other hand; and the Clergy Reserve Question continues, by those who wish it still to remain a Source of Agitation, to be used to raise popular Prejudice and influence religious Zeal against those who took what appeared to be the only Mode of bringing the Dispute to a Conclusion.

The present Parliament commenced during a Time of high commercial Credit, and when great Enterprizes in the way of public Improvements were undertaken with Avidity in all Parts of the American Continent; Events, not arising in the Province, have since that Time produced Two great Crises in the Money Affairs of this Continent. The Undertakings commenced in Upper Canada, which were forwarded by the present Assembly to the utmost Stretch of the Provincial Credit, have come to a full Stop for Want of Means, before their Utility or Practicability has been tested by the Completion of any Work of Importance. The public Finances are exhausted; most earnest Applications for Assistance have been made to Her Majesty's Government, but no Answer has been received; the financial Difficulties of the Province; the public Works remaining at a stand, or going to ruin; Canals and Roads lying half completed, but useless; Labourers previously employed in their Construction driven to seek Employment in the United States; the apparent Waste of the Energies and Resources of the Province; the Difficulties of meeting the Interest upon the public Debt; the Want of a Prospect of immediate Relief, and the Apprehension that no substantial Relief will be obtained; all these have a most depressing Influence upon and produce Impressions unfavourable to the present House of Assembly.

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 Sir G. Arthur  
 to  
 Lord J. Russell,  
 22d Oct. 1839.

Enclosure.

Your Excellency must be aware that the present Assembly has most zealously acted with the Government in the Suppression of the Rebellion, and the Expulsion of the American Invaders, and has, in Addresses to your Excellency's Predecessor and yourself, expressed the warmest Acknowledgments for the Measure of Defence adopted by the Provincial Government. It has also most warmly advocated the Cause of the Sufferers by the Insurrection or by Foreign Aggression; it has expressed the indignant Sense of the Province at the Insults and Injuries committed by the piratical Bands who have found Shelter and Protection within the United States Territory; it has claimed, through the British Government, Indemnity from the United States; it has prayed Her Majesty, that the Sufferers may not be forced to wait the Delays and Difficulties of protracted Negotiation; and Bills have been passed for the Relief of the Sufferers, which await the Signification of Her Majesty's Pleasure thereon.

There has been no Point upon which Differences of Opinion have assumed a greater Degree of Violence and Rancour than with regard to the Treatment of Offenders. The active Loyalists, whose Opinions prevailed in the Assembly, viewed the Offenders as altogether wicked and criminal; the discontented looked upon the Guilt of the Prisoners as materially modified by their "Patriotism." The one Party have complained, that mistaken Zeal in a good Cause should be deemed an Object of Punishment; the other Side have, with as much Warmth, remonstrated against being made the Object of Mercy a Crime, which involved a theretofore peaceful and happy Community in the Horrors of Civil War, and encouraged piratical Invasion. The whole Country is suffering deeply from the Insecurity and Depreciation of Property; each of the different political Parties would willingly throw the Blame and deep Responsibility on the other; and it may be imagined with what intense Anxiety and Interest any Demonstration of Opinion on the Part of Her Majesty's Government is regarded by all Classes of the Canadian People.

It has been, above all, a Justification urged on behalf of the Insurgents, that the present Assembly was elected through undue Means used by the Executive Government, and that this Course mainly contributed to produce, as well as to palliate, the Rebellion. This Charge has been indignantly repelled by the Assembly; those who made it were promptly invited, and an Opportunity was afforded them, to produce their Proofs. A long Report, founded on a great Mass of Evidence, was adopted and transmitted to the Secretary of State, who, in reference thereto, uses the following explicit and satisfactory Language:—

"The Refutation of Dr. Duncombe's Charges is entirely satisfactory. It has been in the highest Degree gratifying to me to be able to report to His Majesty that, after a minute and rigorous Inquiry, during which every Facility was given to the Petitioner to substantiate his Accusation, your Conduct with reference to the Elections has been proved to have been governed by a strict Adherence to the Principles of the Constitution."

Notwithstanding the Refutation, however, the Charge was not only renewed to the Earl of Durham, but appears to have been deliberately entertained by his Lordship, as his Report contains the following Passage:—"In a Number of other Instances, too, the Elections were carried by the unscrupulous Exercise of the Influence of the Government, and by a Display of Violence on the Part of the Tories, who were emboldened by the Countenance afforded to them by the Authorities."

Under this Sanction the Accusation is again renewed with increased Acerbity, and has revived all the Feelings which had been suppressed by its supposed Settlement; and all these Sources of Discord have received a fresh Impulse by the Revival of the great Question of local Responsibility, in the Report of the Earl of Durham. Coming from such Authority, an Opinion in favour of a Concession so important from the Parent State to the Colony is naturally viewed with Delight by those whose Course of factious Opposition it appears to justify, and with Favour by many who see in the Supremacy of a local Assembly in a Colony, exempt from the Control of the Empire, but backed and supported by its Strength, a most desirable State of Things to those who may be fortunate enough to enjoy Parliamentary Influence. The Opinions of Her Majesty's Ministers have not been so decidedly expressed upon this Question as to have had any material Effect in setting it at rest; it still forms the engrossing Topic of public Dispute in Upper Canada, and every other Question is considered as it happens to bear upon this one.

The Constitutionals of the Province, who made such Exertions in maintenance of the Principles of Government according to ancient Colonial Practice, and who defended these Principles in Arms, would see, in the Recognition of a new Principle, a Disapproval of all they have done, they would feel themselves the implicated instead of the justly complaining Party; and any Measure which would tend to place them in this Situation ought to be well considered, and the Consequences weighed previously to their being incurred.

The Council believe that they have thus adverted to the leading Points of Difference which occupy the public Mind; they have shown the Course of Policy which the present Assembly has decidedly pursued, the Accusations which have been made against them, and the Manner in which they have been met by the Parliament and its Adherents.

Those who oppose the Majority of the Assembly would willingly advance their own Views by throwing Discredit upon the Acts and Policy of the prevailing Party; they would exaggerate the Misfortunes and Difficulties of the Province, and make those who influence the Conduct of its Affairs bear the Blame of all existing Evils. Thus Insurrection is attributed to the Denial of justly asserted Rights; the Refusal of a Portion of the People to abide by the Acts of their Representatives, to corrupt Influence and violent Interference with the Purity

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Purity of the Elections. They would, in a Manner, justify Revolt, and stigmatize the Punishment of Traitors as the sanguinary Cruelty of a triumphant Faction, inflicted upon a suffering and oppressed Community; they would assume the Name of the People, as a Distinction, in opposition to those who have upheld the constitutional Powers of Government. All Measures tending to overthrow or unsettle the Institutions of the Province they would denominate popular; all Resistance to them, however numerously maintained, they would ascribe to corrupt Executive Influence, though they are unable to discover its Source or detect its Operations; they would ascribe the Embarrassment of Provincial Credit to Profusion and Extravagance, and the Insecurity and unsettled Condition of the Country to the Want of Prevalence of popular Opinion.

In an independent Country, the Trial of popular Strength by Election seems to decide these Questions, but in a Colony all Parties look with Anxiety for the Judgment of a superior Power. In England, the Dissolution of a Parliament is an Appeal by a Ministry in Power from an existing Parliament to the People. In Upper Canada it bears the Character of a Disapproval of the Acts of the Assembly by the Sovereign. In the present Instance the Questions are asked:—Does the British Government believe the Assembly to have been unfairly elected? Does it believe the Rebellion to be the Result of the unwise and oppressive Conduct of a Colonial Faction? Does it distrust the Decision of the Assembly respecting the great and exciting Question of the Clergy Reserves? Does it approve of the political Doctrines of the Party whose clamorous Opposition commenced the Troubles of the Country? Does it desire to see the Doctrines of that Oppositon prevail and become the ruling Principle of Policy in the Colony?

Those calling themselves Constitutionlists think they have a Claim not merely to be endured by the Queen's Government; they assert they have suffered much to maintain it, and they look for its warm Approval. Their Opponents have impugned the Conduct, the Motives, and the whole Policy of the Constitutionlists. They have made their Charges, and they look for a Judgment in their Favour to be pronounced by a Dissolution of Parliament.

The Reiteration of Charges against the Assembly in the Report of the Earl of Durham, the upholding in that Report of the Principle of Government which formed the extreme Point of the Claims of the Opposition Party, Delay in acceding to the Acts of the Provincial Parliament, the Removal of Sir John Colborne, whose political Opinions were known and decided, naturally encourage the Hopes of the Party claiming to be popular, and give rise to Apprehensions on the other Side which may lead to serious and important Results.

The Question of the Union of the Two Provinces comes to be considered in this State of the Public Mind. Could this Question be considered alone, and apart from other engrossing Topics, much sound Reasoning may be adduced in favour of calling a new Parliament. Had the present Assembly been elected under ordinary Circumstances, or its Line of Policy been less marked, or the Events which have occurred during its Existence less momentous, it might be dissolved without the Probability of Offence being taken by any Portion of the Community, and all would probably acknowledge the Propriety and Justice of submitting a great Question, which must affect the future Destinies of the Country to an incalculable Extent, to the Representatives of the People, fresh from the Hustings, and chosen with a direct View to the particular Duty they are called upon to perform.

The Executive Council, conscious that they have fully concurred with your Excellency in pursuing a Line of Policy independent of violent Party Feeling, and the Government having by this Course sometimes incurred the Displeasure of extreme and violent Partisans on both Sides, feel that they can with the greater Confidence advise your Excellency of the Consequences which they apprehend should the Government take any Step which might be considered decidedly hostile to that Class which has most zealously shown its Adherence to British Connexion.

The Council think it most probable that the other Questions, to which Allusion has been made, will form the leading Points likely to influence the next Elections; and that the Question of the Union will have much less Weight in the Choice of Representatives than the Topics of Discussion arising from the Events which have lately agitated the Colonies.

It is not difficult for a Government to drive from their Position those who have shown themselves zealous in the Support of its legitimate Authority, and should the Class of the Inhabitants of the Province who have taken a distinguished Part in asserting the Supremacy of the Imperial Government imagine themselves slighted or discountenanced, the Effect may be fatal to the Cause which such Men have most warmly supported.

The Council have perceived with the deepest Regret, and they feel it their solemn Duty to state, that some may be found who were willing to risk Property and Life in Defence of British Connexion, and in opposition to any Measures which appear eventually to lead to Separation from the Empire, at length wearied and harassed with the protracted political Struggle, and the ruinous Insecurity which it entails upon this suffering Community, and who would now seek for Peace and Prosperity in a political Change most opposite to their Opinions, and most inconsistent with their previous Conduct. The Danger of such a Sentiment, should it prevail in these Provinces, is too manifest to be disputed. It is too serious even to permit the Risk to be incurred by a prudent Government; and, without wishing to uphold a Party, or advance party Politics, the Council think they are right in representing to your Excellency that there may arise Circumstances sufficient to stifle Zeal, however

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ardent, and weaken Attachment, however devoted and sincere. Should the Class in the Community which has hitherto supported the Government be driven into opposition to the local Administration, by Encouragement of the former Opposition, another Danger presents itself, which is well worthy of Consideration. Notwithstanding the Clamour of the Politicians who have demanded the Concessions of Authority to the People, the Council believe them not to be the strongest in the Province. Hitherto the Election of a Constitutional Majority has given Strength and Stability to the local Government, but it has never had to contend against an Opposition from its former Supporters, and in such an Event the Council are not afraid to predict that the Conduct of Affairs in these Countries as Colonies will not long be found practicable. The Council do not wish to be understood to assert that Loyalty to the Sovereign, or a Wish to preserve the Unity of the Empire, is confined to any Party or Class of Politicians in the Country; many may be found as sincerely loyal on the one Side as on the other; but if Comparisons must be made of Parties and Classes generally, the Council cannot avoid the Conclusion, that the Portion of the Community claiming to be constitutional are most to be depended upon for disinterested and steady Attachment to the British Crown, and most determined, through good and evil Fortune, to adhere to the Connexion with the Empire, which the Council are bound to regard as a Consideration paramount to all others.

Should a Feeling of Discouragement on their Part cause a Relaxation of their Endeavours, or Retirement from the political Contest, in which their Efforts would no longer appear to meet with Approval or Support, or to any serious Extent induce them to look for the Peace and Security essential to the private Welfare as well as to the public Prosperity of the Community in the Admission of foreign Institutions, the Council think that the Attempt to preserve these Colonies would indeed be vain; and the Council feel that they only discharge their Duty when they state Grounds for Apprehension, which they would willingly hide from themselves, if Events, daily occurring, permitted them to do so.

The Council, for these Reasons, upon the gravest Deliberation, have come to the Conclusion to advise your Excellency that the Dissolution of the present Assembly would not be expedient.

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No. 2.

(No. 54.)

COPY of a DESPATCH from LORD JOHN RUSSELL to Lieut. Governor  
 Sir G. ARTHUR K.C.H.

No. 2.  
 Lord J. Russell  
 to  
 Sir G. Arthur,  
 17th Dec. 1839.

Sir,

Downing Street, 17th Dec. 1839.

I HAVE to acknowledge the Receipt of your Despatches, Nos. 204 and 214, of the 22d of October and 11th of November, the former containing a Copy of a Minute of the Executive Council of Upper Canada on the Question of the Expediency of dissolving the present House of Assembly, the latter containing your Opinion as to the Course of Proceeding which it would have been convenient to have adopted for bringing the Question of the Union under the Consideration of the Upper Canada Legislature.

I have in reply to acquaint you, that before the Arrival of your Despatch Her Majesty's Government had fully considered all the Objections which existed to a Dissolution of the Upper Canada House of Assembly.

I have only further to assure you that I fully appreciate your Motives in determining to support the Governor General, by every Means in your Power, in his just Authority.

Sir G. Arthur, K.C.H.,  
 &c. &c. &c.

I have, &c.  
 (Signed) J. RUSSELL.

For Despatch,  
 11th Nov., No. 214.,  
 vide Correspondence relative to  
 the Affairs of  
 Canada, 1840,  
 Part 2., Page 219.



