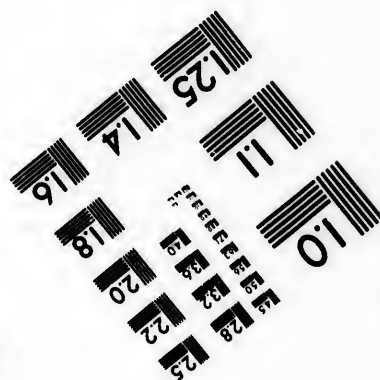
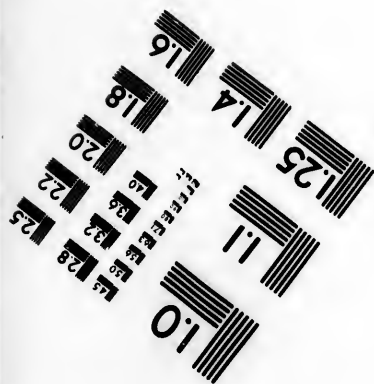
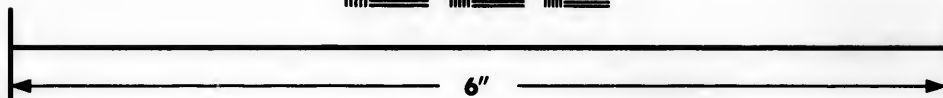
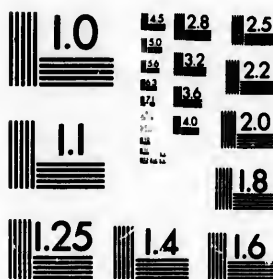


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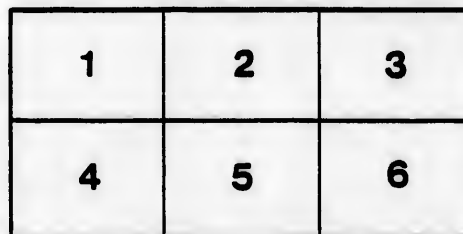
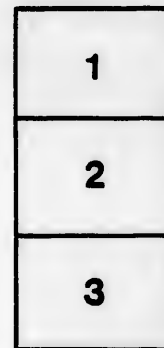
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Vol. 1

Dear Stafford.
I think this contains some
suggestions worth considering

SUGGESTIONS

J. H. G.
7-20/65

FOR

COLONIAL REFORM.

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PREFACE.

In the year 1850 I employed my leisure, of which I had enough and to spare, in studying Colonial Law, and in preparing for the late Sir William Molesworth a scheme of Colonial Reform, which he introduced into Parliament as a series of Amendments to a Bill for the government of New South Wales.

The principle on which the scheme rested was the necessity for a proper division of Imperial and Colonial powers, in order to secure the Colony from undue interference on the part of the mother-country.

Since 1850 the whole aspect of Colonial politics has changed; ample powers of self-government have been given to the Colonies, but sufficient care has not been taken to protect Imperial rights from infringement, and to enforce on the Colonies the duties and obligations incident to the exercise of the legislative powers committed to them.

Under these circumstances, it occurred to me that a portion of my last long vacation might be usefully employed in reconsidering the whole question, with a view of adapting

to the present altered state of Colonial affairs the former scheme of Colonial Reform, with such modifications as further experience has suggested.

The result is the series of provisions, intended as suggestions for a Colonial Bill, which are found in the Appendix.

A series of enactments, however, is scarcely intelligible without a preliminary explanation; hence the following pages. The plan which I have adopted is, first, to attempt to ascertain the principle upon which Colonial Reform should be based; and, secondly, taking up and explaining the scheme in the Appendix, to show, by an examination of its leading features, that it is in accordance with that principle.

My great object is to prove that, by a little foresight, most of the difficulties that have arisen between the mother-country and the Colonies might have been avoided, and that without it those difficulties will continue to increase.

I have added some observations on the projected British American Federation, with an explanation of the real distinction between Federal and National Forms of Government.

HENRY THRING.

5, QUEEN'S-GATE GARDENS, SOUTH KENSINGTON,

January 11, 1865.

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SUGGESTIONS

FOR

COLONIAL REFORM.

THE war in New Zealand not yet brought to a close, the backwardness of Canada in answering England's call to arms, the insolent claim of the elder Australian colonies to interfere between the mother-country and West Australia, the ecclesiastical differences at Natal, and last, but not least, the scheme for a union of the British American colonies, naturally direct attention to the relations between the mother-country and the Colonies.*

It cannot be said that those relations are well understood, or that they stand on a satisfactory footing.

A parallel to the case of New Zealand at the beginning of the late war will be found by imagining for a moment that Ireland were a dependency of France, and France ever willing to pour troops into Ireland on the suggestion of a quarrel having arisen between Protestants and Papists. How many little Irish wars would not France have on her hands! Each little war would transfer a slice of confiscated land from a Protestant owner to his Papist neighbour, and, in addition, the latter would gain not a little by

Attention at the present moment naturally directed to relations between the mother-country and the Colonies.

Those relations unsatisfactory.

Illustration of case of New Zealand.

* The observations in the following pages are not intended to apply to the British dominions in India, to Gibraltar, Malta, or other dependencies held for military or other special purposes.

feeding the soldiers employed to reap for him the harvest of spoliation.

The case supposed scarcely exaggerates the circumstances of a war as hitherto waged on behalf of a colony by the mother-country. The end was certain—namely, the retreat to more distant lands or the utter destruction of the native tribes. If the war were long, the colonists long enjoyed the enhanced prices produced by a large war expenditure; were it short, they entered the sooner into the inheritance of the exiled savage.

It requires an infinite charity to suppose that, under such a system, Colonial wars would be either infrequent or inexpensive.

A warning has been recently given to New Zealand by the wise policy of the present Colonial minister, that she must, for the future, look to other sources of profit than those arising from Maori wars. Better still would be an Imperial Act setting the question at once and for ever at rest.

Case of
Canada.

Again, look across the Atlantic. On one side of a border-line some 2000 miles in length, more than two millions of men are in arms; on the other side there is, quietly marrying and giving in marriage, trading, smuggling, and otherwise amusing itself, the largest, freest, and most adult colony of England—Canada. A great defeat or a great victory of either party on the other side of the border-line might flood Canada with troops; yet Canada scarcely gives sign of preparation against the impending danger, and laughs at what it calls the foolish caution of the mother-country.

Case of
Australia.

Neither can Australia be regarded with satisfaction. The defiant claim of the old Australian colonies to deprive West Australia of the labour by which they themselves have so largely profited is more exasperating to an Englishman than the lust of New Zealand for

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war, or the easy indifference of Canada to the consequences of war.

Such a state of things is matter for serious reflection. Freedom has its duties as well as its rights; why should the mother-country exert herself to defend colonies that will not fight for themselves?—why retain in her family, and under the protection of her name, insolent and disobedient children?

Duties of the mother-country and the Colonies reciprocal.

The view taken by the Colonies is characteristic. They deem it to be with England a question of the pocket, not of honour; they think the mother-country derives such substantial advantages from her Colonies that she dares not without a struggle abandon so great a prize to the possible domination of foreign countries.

Colonies imagine that they are too valuable to be abandoned.

The only mode of testing the truth of the case made by the Colonies is to examine the various modes in which colonies ancient and modern have been, or have been supposed to be, advantageous to the countries from which they sprang; if the conclusion be that, in any of those modes, England has been benefited, it must be admitted, to the extent of that benefit, she has incurred a debt to her colonies which she cannot justly refuse to pay.

Examination of value of colonies.

The old and simple token by which, in ancient times, a colony acknowledged its dependence on the mother-country was by payment of a tribute.

Colonies in ancient times paid tribute.

Athens, as soon as she had escaped from the dangers of the great Persian expedition, employed her ascendancy in reducing her allies to subjection, and compelling them to pay into the treasury of Athens, by way of tribute, the amount which they had previously voluntarily contributed to Delos in furtherance of the common cause.*

Athenian colonies.

* Lewis on the Government of Dependencies, p. 102.

Carthaginian colonies and Roman colonies.

Carthage exacted large sums from her dependent allies; and in the Roman Empire, as was too much the case formerly under the rule of the Company in India, the ability of a governor was measured rather by the amount remitted by him for the use of his masters than by the equity displayed by him in the administration of his province.*

Royalties reserved, in case of colonies in America, a species of tribute.

The only approach in modern times to the levy of a tribute is the reservation of royalties on mines of gold and silver made by the various nations who colonized America. Columbus proposed that half the gold and silver found should belong to the Crown; the amount was afterwards reduced to a third, then to a fifth, and at last to a twentieth part.†

Royalties did not pay the expense of the government in the colony.

This tax, however, did not answer the expectations of the persons who imposed it. The Colonial government of Spain was very expensive, and the American colonies yielded very little surplus income to the mother-country.

First English settlers offered royalty.

The first English settlers in America offered a fifth part of all gold and silver to the Crown, as the price of their patents; but, as no mines of gold or silver worth the expense of working were found by the adventurers, the expected payment was never made.‡

It must be admitted, however, that the abstinence of the mother-country from a direct taxation of the Colonies arose from the want of the way, rather than of the will, to tax.

Attempt to make a profit of Colonies by the mercantile system.

What could not be done directly was attempted indirectly. An attempt was made to monopolize entirely the commerce of the Colonies, by enacting a series of statutes which prohibited the colonists from establishing

* Lewis on Dependencies, p. 102.

† Smith's "Wealth of Nations," by McCulloch, book iv., p. 252.

‡ *Ibid.*, book iv., chap. 7, p. 253.

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advanced or refined manufactures, even of Colonial produce, and compelled them to purchase of British merchants and manufacturers all goods of that kind for which they had occasion.*

Looking back on the laws imposing such restrictions by the light of modern knowledge, the merest tyro in Political Economy can afford to laugh at the failure of a system that proposed to enrich the mother-country by carrying on a trade which was unprofitable to the colony, and which was based on the principle that an impoverished dependent colony was a better customer than a prosperous independent country.

Failure of system to benefit the mother-country.

At any rate, this system has long been abandoned, and England, ashamed of her selfish endeavours to enrich herself at the expense of the Colonies, testified her penitence by going into the opposite extreme, and admitting into her ports Colonial wine, Colonial timber, and Colonial sugar at a less duty than similar commodities, the growth of foreign countries.

When this last barrier of protection yielded to the assault of the free-traders, the generosity of England found a different channel. In 1854 she made a treaty with the United States by which goods, the produce of the United States or of the British North American provinces, were admitted into either country absolutely free from duty. In other words, Canadians or New Brunswickers bought and sold without the restrictions imposed upon Englishmen; while the latter, even in time of peace, were paying annually no less a sum than a million and a half for the protection of British North America and of the West Indies.† Look again at the

* Smith's "Wealth of Nations," by McCulloch, book iv., chap. 7, p. 261.

† McCulloch's Commercial Dictionary, "Colony Trade," 3rd edit., 1859.

Customs in
Colonies.

protective customs duties, which the mother-country, with a too easy abandonment of self, and without sufficient consideration of the general interests of her Colonial empire, has allowed the Colonies to impose.

The recent quarrel between New South Wales and Victoria, as to the boundaries within which each is entitled to levy her imposts, and the rumour that the Australian colonies are organizing opposition to Great Britain by putting high duties on her productions, also tend to show that, in commercial legislation, the mother-country has relaxed the reins too much in favour of the Colonies, instead of holding them too firmly in her own hands.

Colonies not
furnished
recruits for
army or navy.

Money, however, is not the only source of power to states. Men, to furnish recruits for the army and navy, are, to a commercial nation such as England, the very pith and marrow of power.

No sacrifice of expense in the maintenance of colonies ought to be grudged, if experience had shown that, on a call to arms by the mother-country, a body of sturdy and devoted colonists were willing and ready to come to the rescue.

The fact, however, is otherwise. The alien population of Hindostan is almost the only subject-people which has borne arms for England; and no instance has yet occurred in which a colony has been willing—although, as in the case of Canada, able—to furnish sufficient men for the defence of its own frontier, let alone the rendering any assistance to England or the allies of England.

Colonies not
advantageous
as penal
settlements.

Lastly, the advantage to be derived by the mother-country from treating a colony as a place to which it may send its convict population has been often urged. Transportation was first adopted as a regular punishment in the reign of Charles II. It assumed a systematic

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form in the year 1718, when an Act was passed enabling the criminal courts to hand over offenders to contractors, who engaged to transport them to the American colonies.

The contractors were invested with a right of property in the service of the criminals, and this right they sold to the planters of the Southern States of America, who competed keenly for the purchase of the slaves thus brought to their very doors.*

This system continued till it was put an end to by the American war; and, within six years after the signature of the Peace of Paris, the penal settlement of New South Wales was founded for the express purpose of receiving the convicts, for whom a market could no longer be found in America.

From the date of the foundation of the colony of New South Wales to the present time transportation has been alternately praised as the best and condemned as the worst kind of punishment. It deserved, in all probability, neither praise nor blame to the extent to which it was bestowed. This much, however, is certain, that, if an account were taken of the relative profits derived from transportation by the mother-country and the Colonies, the balance would not be on the side of the mother-country.

The result is, that England never has, probably no European nation ever has, on the whole, derived any direct pecuniary advantage or any accession of military power from its colonies.

If we look at the other side of the account, the expense incurred by the mother-country in respect of her Colonies, it must be admitted that a Colonial family is not only very difficult to manage, but makes a heavy pull on the parental purse.

Result—
Colonies not
beneficial in a
pecuniary
point of view.

Expense of
Colonies.

* Encyclopædia Britannica, "Prison Discipline;" Lewis on Dependencies, p. 237.

Caffir wars, New Zealand wars, Canadian discontents, make a colony a very bugbear to the political economist; and worse than all is the temptation that colonies offer to foreign countries for invasion, with a view to insult the mother-country, or drain, as is supposed, the sources of her power.

Take but the single example of Canada: what relief would every Englishman feel if he could but hear that Canada were fairly started in the world on its own account, without discredit, and without heart-burning! who would not think that the Old Man of the Mountain had shifted his position, and be heartily glad at the change?

Colonization a
necessity.

It does not, however, follow that the indirect benefits of colonization are inconsiderable. In a great nation crowded into the narrow limits of a country like England, emigration is an indispensable condition of its healthy existence; numerous outlets must be found for its increasing population, or else that increase must be brought to a stand-still by misery and want.

Again, no Englishman can or ought to be indifferent to the part taken by England in peopling the vacant places of the earth.

If he value English laws, English religion, English freedom, he cannot but earnestly desire the establishment, throughout that empire on which the sun never sets, of copies of English institutions, rather than the examples of French centralization or of Russian despotism.

These moral advantages, however, of colonization are not in any degree the result of a state of dependence between the colony and the mother-country. They would equally ensue if the English emigrant went forth, like the Greek in ancient times, to seek new lands, carrying with him only the good-will of the parent state, its prayers, and its tutelary gods.

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Is then the upshot of the above observations a proposal that England should refuse all assistance to new settlements, and should abandon at once all existing colonies without caring what may be their fate?

Colonies not to be abandoned.

By no means—nothing would be more inconsistent than to boast of our civilization and the interest we take in human progress, and yet to grudge the expense of aiding the struggling settler, the most efficient pioneer of civilization; nothing more unjust than to bring up a colony in the idea that it might rely on the fostering care of the mother-country, and then to withdraw that care before the colony can maintain itself; nothing more impolitic than violently to break off all connection with a colony that is willing to retain its allegiance without throwing on the mother-country the weight of those burdens which it is the duty of a virtually independent country to sustain for itself.

The true intention of what has been said is to prepare the reader for the consideration of a scheme of Colonial Government, defining the relations between the mother-country and the Colonies, and declaring their mutual obligations and mutual duties.

Settled rules to be laid down as to relations between colony and mother-country.

The apparent difficulty in the way of framing such a scheme is to show that there exists an efficient mode of enforcing its provisions. Once dispel the illusion that the continuance of a colony in a state of dependence is a gain to the mother-country, and the difficulty entirely disappears; abandonment will be a sufficient punishment on the part of the mother-country of any grave act of Colonial disobedience. If the colony desire emancipation, it can start for itself in the world and rid the mother-country of a relation which, unless it be one of good-will and affection, is burdensome and useless.

Assuming the possibility of a settled rule of conduct being established by law between the mother-country and

Advantages of settled rule.

her colonies, it is impossible to overrate the advantages of such a settlement. If the warning of the present Colonial minister, that New Zealand must bear the expenses, or at all events a portion of the expenses, of the war with the Maoris, had formed a clause in the original constitution of the New Zealand colonies, can anybody doubt that we should have heard little of Maori wars and Maori aggressions? Canada also must have assumed a different position had it been subject to an Act of Parliament declaring it to be the duty of every adult colony to bear its due proportion of the expenses of war, and to contribute its quota of men.

A few lines would have set at rest the ecclesiastical squabbles in Natal, by declaring what would seem to follow from the very nature of the case, that the ecclesiastical law of England does not extend to the Colonies. A statutory prohibition would have taken it out of the power of the Australian colonies to quarrel about boundaries, or bluster with respect to the imposition of high customs duties on English produce.

In short, every argument that recommends the government of individuals in a State by fixed rules of law, instead of leaving them at the mercy of a despot's decrees, applies with equal force to the establishment of general rules for the regulation of the rights and duties of a dominant and a subordinate community.

"Improper limitations of the local powers of a colony," says Mr. Wakefield, "if they were fixed by law so that every colonist should know exactly what they were, would be far preferable to the most proper limitations imposed from time to time arbitrarily, irregularly, and without warning."*

Necessity of

It is useless to add further arguments or multiply

* See Preface to Lucas's "Charters of the Old English Colonies."

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examples; if the foregoing observations are well founded, the conclusion necessarily follows that the well-being of a Colonial empire depends on rules being laid down defining the relations between the mother-country and the colonies, during every stage of the existence of the latter as subordinate communities. These rules should embrace the following points. In the first place, the circumstances should be marked out under which adventurers may settle in an uninhabited district. At first the settlement should be subject to the absolute jurisdiction of the Crown. When it has attained a sufficient population, it should become a colony having ample powers of self-government, with representative institutions. Lastly, means should be provided by which a colony, having arrived at maturity, may (if it think fit) declare to the mother-country its wish to be independent, choose for itself its form of government, and enter into the society of independent nations.

Rules should also be established by which the mother-country may dismiss a disobedient colony, and send it forth to struggle for itself.

More than half the heart-burnings and bickerings in the world arise from the absence of a settled rule of conduct to meet a possible contingency, from the impossibility of parting without the pride of the one party being hurt or the dignity of the other offended.

It is with nations as with men—words are of more power than deeds, and losses are borne with more equanimity than taunts.

The scheme of Colonial Government in the Appendix has been drawn up with a view of giving practical effect to the foregoing conclusions. It takes up a colony at its foundation, and leaves it only when it has provided for its acquiring independence, by a peaceable separation from the mother-country.

legislative provisions defining the relations between the mother-country and the colony during every period of its existence.

Colony should be empowered to become independent.

Mother-country authorized to get rid of a disobedient colony.

Advantages of settled rule of conduct.

Scheme in Appendix intended to fulfil foregoing conditions.

Reasons for giving scheme in full.

It may be objected to this plan of treating the subject that it is unnecessarily tedious—that there is no place now for new settlements; the vacant places on earth are filled up, why then trouble ourselves with theoretical cases and theoretical forms of government? Why not proceed at once to consider existing colonies alone?

The answer is that no plan can be completely understood unless it is set out in full; that a page or two will be sufficient to describe the foundation of a colony and the local form of government in the colony. A few words show the direct application of the remainder of the scheme to existing colonies. Little time will therefore be lost, and a more complete case be made out. Moreover, it is not the fact that there are no new worlds for England's sons to conquer: vast tracts in Australia, islands in Polynesia, lands in Borneo and elsewhere, are still open to enterprising and daring emigrants.

Explanation of scheme in the Appendix.

With these observations I shall proceed to explain the scheme of Colonial Government proposed in the Appendix.

That scheme is divided into Four Parts:—

- I. Formation of New Settlements.
- II. Local Government of Colony.
- III. Division of Imperial and Local Powers.
- IV. Independence of Colony.

As may be conjectured from the title, Parts I. and II. do not extend to colonies in which constitutional forms of government are already established. Parts III. and IV. apply, of course, to the new settlements formed under Part I., and, after a limited period, may come into force in every existing colony.

Part I., Foundation of a Colony.
Petition to

To begin with the Foundation of a Colony.

Part I. provides that a body of persons desirous of founding a new settlement in her Majesty's dominions,

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beyond the acknowledged limits of an existing colony, may petition her Majesty for permission to do so.

The petition will be referred to the Colonial minister, whose duty it will be to advise her Majesty to refuse or grant her assent.

If the assent be given, the Colonial Office will proceed to fix the boundaries of the settlement, and to make, by Orders in Council, regulations for the government of the embryo state.

The regulations are only to be temporary. As soon as the settlement acquires a population of 5000 adult men, of European descent, they may address her Majesty for a declaration that they have passed into a second stage of existence—namely, that of a colony.

As soon as the declaration is made, the 2nd, 3rd, and 4th parts of the scheme extend to them without the intervention of any Act of Parliament.

This brings us to the Second Part of the scheme, the Form of Local Government in the Colony.

To established colonies this part does not, of course, apply, as nothing but the most extreme necessity can justify any interference with the local institutions of a self-governed colony without its consent.

The proposed form of government consists of a Governor and two elective Houses of Parliament—the Upper House, or Legislative Council, and the Lower, or House of Representatives.

Something perhaps may be said upon the importance of a division of the legislature into two branches. As a matter of reasoning, no one can doubt “that a hasty decision is not so likely to proceed into the solemnities of law, when it is to be arrested in its course and made to undergo the deliberation, and probably the jealous and critical revision, of another and rival body of men, sitting in a different place, and under better

her Majesty by persons desirous of founding new settlement.

If assent given, Colonial Office to have colony surveyed and fix boundaries.

Settlement to be governed by Orders in Council, but to be created a colony when population of adult males equals 5000.

Part II. of scheme—Local Government of Colony.

This part not applicable to existing colonies.

Form of government is a Governor and two Houses of Parliament.

Advantage of two Houses.

advantages, to avoid the prepossessions and correct the errors of the other branch."*

This view of the case is amply confirmed by the experience of the American States: the inhabitants of Pennsylvania and Georgia felt so keenly the inconvenience of a single House of Legislation, that they reformed their constitution for the sole purpose of introducing a Senate.

A still more notable instance is that of Rhode Island. The charter of that State established a General Assembly, consisting of one body. That feature in the charter was maintained from the time of Charles II. until the year 1843, when the people found it so intolerable that they voluntarily established a Senate, consisting of one member only from each city or town.

Upper House, or Legislative Council, endures nine years, with a rotation of members every three years. Qualification of members and electors.

With a view to giving greater stability to the Legislative Council, it is chosen for nine years, a third part going out every three years.

The members of the Legislative Council and House of Assembly must each possess a property qualification. The qualification in the first instance is to be fixed by the Order in Council.

The elective constitution of the Upper House is a matter of necessity. No other way can be devised of preventing gratings between the two Houses that may retard, and at last put out of gear, the whole machinery of government. No system of nomination will create a House of Peers, with its traditions, its experience, and its ancient prestige.

Power is given to the Colonial legislature of altering the constitution of its own body in any way it pleases, so long as it preserves the three estates of a Governor, a Legislative Council, and a House of Assembly.

* Kent's Commentaries, i. 221.

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The third part of the scheme is the key-stone of the whole system. It fixes the limits between imperial and local powers, provides for the disposition of the waste lands, and arranges the conditions on which the mother-country undertakes to assist the colony in war or civil commotion.

Third part of the scheme—the key-stone of the system.

The principle that should regulate the division of imperial and local powers is firmly established. "A colonist is entitled to all the rights of an Englishman that are applicable to his situation, and consistent with the due subordination of the colony to the Crown of Great Britain."*

Division of imperial and local powers.

The first and most important of the powers to be reserved as imperial are the prerogatives of the Crown with respect to peace and war, and making treaties with foreign nations; in short, the power of regulating the relations of the empire towards foreign nations.

Reservation of rights of peace and war.

These are the *jura summi imperii*, the very insignia of supremacy, the attributes of sovereign authority in every form of government, be it despotism, limited monarchy, or republic.

The only difference is that, in a system of government under one supreme head, they are vested in that head alone; in a federal government, as in America or Switzerland, they reside in the composite body forming the federal supreme authority.

Various subsidiary powers necessarily attend on the above supreme powers; for example—

Powers subsidiary to powers of making peace and war.

The power of making war involves the power of enlisting men in the colony, commanding the militia, taking land for defensive purposes, establishing courts for the trial of international questions, and other incidental powers.

* Campbell v. Hall, Howell's State Trials, vol. xx.; p. 289.

Closely connected with the power of making peace is the power of sending and receiving ambassadors, the power of regulating commerce with foreign nations, the punishment of offences in contravention of any treaties made by Great Britain.

Powers to be vested in the mother-country for the purpose of maintaining order in the Colonial empire.

Having made the reservations necessary to prevent a colony from embroiling the empire with foreign nations, and to regulate its external relations, the next step is to vest in the mother-country such powers as are required for preventing disputes and facilitating intercourse between the various parts of the British empire.

Of these powers the most important are :—

- (1.) The power to fix the boundaries of a colony, to regulate commerce between the different colonies and other parts of her Majesty's dominions.
- (2.) The coinage of money and other regulations relating to currency.
- (3.) Laws relating to bankruptcy and insolvency.
- (4.) Laws relating to copyright or other exclusive rights to the use or profits of any works or inventions.

Taking these subjects in order :—

Reservation of power to fix boundaries of a colony.

As to the boundaries of a colony. Bentham enumerates among the causes of war amongst nations "uncertainty as to boundaries." As colonies are independent states in relation to each other, a dispute as to boundaries cannot be settled in the ordinary course of law.

It is, then, for the advantage of the colonies themselves that England should step in as an impartial arbitress; for, without that aid, the peace of the empire may be disturbed and the prosperity of the colonies be destroyed by petty wars, as fierce and unprofitable as those conflicts of the Heptarchy which Milton contemptuously likened to the battles of crows.

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The power of regulating commerce between the different colonies and other parts of her Majesty's dominions is intended to prevent the imposition of improper duties on imports and exports in contravention of free-trade and common-sense.

Reservation of power to regulate commerce among different parts of the empire.

The tendency of small states to erect commercial barriers against each other and all other nations was familiar to every traveller in Europe before the institution of the Zollverein in Germany and the consolidation of the Italian empire. At the close of each day's journey a new sovereign state turned up, with a new custom-house, a new tariff, a new monetary system.

The system was vexatious enough to a solitary traveller, whose only taxable article was a box of cigars or a bottle of brandy; to trade it formed a greater obstacle than the longest or most difficult transit by land or sea.

Other noticeable provisions relate to the currency, the laws of denization and naturalization, and to bankruptcy. On all these subjects uniformity is so desirable that the efficiency of a law respecting them may be measured by the extent of area within which it is in force. Conceive the inconvenience of sovereigns and shillings being current at Sydney, but not at Melbourne; of a man being an alien at Otago and a British subject at Nelson; of a debt being cancelled by a bankruptcy at Auckland, while the debtor is liable to be arrested as soon as he sets foot on shore at Canterbury.

Reservation of powers as to the currency, laws of naturalization, and so forth.

The supremacy of the Crown in imperial matters being secured by the reservation of the above-mentioned powers and prerogatives, the Colonial legislation is left to deal as it pleases with all other subject-matters of legislation.

General powers of the Colonial legislature.

Even imperial questions are not placed altogether out of their reach; for, with respect to some of the above subjects—such as bankruptcy, for example—uniform

legislation in a group of colonies may be very desirable; whilst it may not be necessary to extend that uniformity to the whole empire: the restriction is that an imperial bill or a bill relating to any reserved power or prerogative of the Crown must be accompanied by an address stating the imperial matter to which it relates, and praying her Majesty's assent thereto.

The assent of her Majesty to an imperial bill may be given by the Governor, if he has received express instructions to that effect. In any other case an imperial bill does not become law until it has been sent to England, and received the direct assent of the Crown.

Local bills, on the other hand, or bills relating to matters not imperial, must be rejected or approved by the Governor before the end of the session in which they are passed; and the exercise of his discretion in assenting to, or dissenting from, such bills, is not made subject to the control of the government in England. Where a doubt arises as to whether a bill is local or imperial, a method is provided for solving that doubt—in the first instance by the opinion of the principal judges of the colony, and ultimately by a reference to the Judicial Committee of the Privy Council in England.

Arrangements
between
mother-
country and
colony in the
event of war.

The colony, having acquired the right to govern itself, must be prepared to sustain some of the burdens of self-government; the next section therefore provides that, in the event of a foreign war, her Majesty will protect the colony from aggression if the colony on its part contribute a reasonable quota of men and money.

On the other hand, it is expressly said that the expense of all aid required by the colony from the mother-country for the suppression of internal riots or

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wars with native tribes must be defrayed by the colony.

The justice of these provisions can scarcely be gainsaid. Canada claims to be a part of the British empire, and as much entitled to protection from the mother-country as Yorkshire: be it so; but, if true, why should not Canada contribute towards the support of the whole empire in like manner as Yorkshire? A Canadian emigrant is, at all events, as well off as a Yorkshire labourer, and can bear taxation as easily.

The section referred to stops, however, far short of any such demand; all it asks is that *some* exertion should be made on the part of the colony to assist the mother-country.

Nobody expected Canadian regiments to storm the Redan side by side with the English soldiers. Nobody hopes to see Australians or New Zealanders volunteer for service out of their own country; but there is no reason why England should tax Middlesex to pay the expense of fortifications in Canada, or to kill Maoris for the benefit of Auckland land-jobbers.

Another section enacts that the legislature of the colony may dispose of the waste lands for the benefit of the colony, reserving to the native tribes any rights or privileges, or any interests in land to which they may be entitled.

Provisions as to waste lands.

By the law of nations, as it is called, discovery gives to the first comers the title to the soil, subject to the possessory right of the natives.*

According to the best jurists of America the natives are to be considered merely as occupants, to be protected in peace in the possession of their lands, but to be deemed incapable of transferring the absolute title

* Kent's Commentaries, i. 257.

to any other than the sovereign of the country, who possesses a legal title, with an absolute and exclusive right to extinguish the native title of occupancy, either by conquest or purchase.*

"The good old rule, the simple plan,
That they should take who have the power,
And they should keep who can,"

is good law in England as well as in America, and has been so from the time whereof the memory of man runneth not to the contrary.

Whatever, then, the moral aspect of the case may be, I believe that the only course practically open to England is to leave the whole matter in the hands of the colonists, themselves, as is proposed in the scheme in the Appendix.

If the natives are to be effectually protected by the mother-country, they should be collected into a separate district, to be governed as a Crown colony at the expense of England; and all interference on the part of the colonists with the lands of the natives should be barred by a *cordon* of troops. Such a course is clearly impossible; the next best thing, then, is to throw the responsibility of quarrels with the natives on those who have the power, if they have the will, to avoid them.

The worst course, beyond all doubt, is that followed in the recent wars at the Cape, and until very recently in New Zealand, where the option of declaring war and the fruits of victory are given to the colonists, while the burden and cost of the fight, and, worst of all, the obligation of defending Colonial aggression at the expense of native rights, fall to the lot of the mother-country.

Third part of
scheme illus-
trated by
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* Kent's Commentaries, i. 257.

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The division of local and imperial powers made by the third part of the scheme is not a mere matter of theory, as a similar division, expressed almost in the same language, is contained in the articles of the American constitution that fix the limits between the powers of the Federal Government and the powers of the States.

The only material difference is, that, in the American system, the waste lands are vested in the Federal Government, while, in the proposed scheme, they are given up to the Colonies, for the reasons above stated.

The American constitution has, in a *legal* point of view, worked successfully for a period of seventy years; and disputes between the individual States and the Federal Government as to their respective jurisdictions, have been determined, in the ordinary course of law, as easily, and by the same process, as disputes with respect to the jurisdiction of a county-court and the Court of Queen's Bench, or questions as to the validity of a by-law, are determined in England.

It is true that the American constitution has been put on its trial and been found miserably wanting; but its failure has arisen from the unwillingness of the Southern States to abide by its provisions, and not from any doubt as to their meaning, or difficulties in their working.

These facts prove to demonstration the possibility of an effective division of local and imperial powers. In short, they lift the proposed scheme out of the vague region of theory, and place it on the vantage-ground of practice and experience.

The mention of secession in the United States naturally suggests the possibility of secessions in the proposed Colonial empire. One colony may honestly and fairly wish to set up in the world as an independent

Fourth part of scheme, providing for a colony becoming independent.

state; another may refuse to contribute its fair proportion towards the defence of its frontiers; a third may infringe the rights of the mother-country, or of neighbouring colonies, or otherwise place itself out of the pale of English sympathies and protection.

In any of these events the idea of coercion on the part of the mother-country must be dismissed at once, as altogether inconsistent with the principles on which a Colonial empire is founded: the remedy would be far worse than the disease; victory would scarcely be less disastrous than defeat; as a colony driven to submit by force of arms would cease to be a colony, and degenerate into a reluctant ally, or an abject and discontented dependency.

In truth, the separation of the colony from the mother-country ought not in itself to be regarded with suspicion or dislike. It should rather be looked at as the natural termination of a connection in itself of a temporary character.

In legal phrase, the connection between the mother-country and any particular colony is in the nature of a partnership, determinable at the pleasure of either party, on compliance with certain prescribed legal formalities.

Proceedings
by which a
colony may
acquire inde-
pendence.

In accordance with these views, the proceedings by which a colony may become independent are found in the fourth part of the proposed scheme.

They are shortly as follows:—The wish of the colony must be expressed in an address to the sovereign, presented by both Houses of the Legislature, praying that the colony may be declared independent.

Due provision is made that so important a step shall not be taken in a sudden fit of anger or impatience, by requiring that the resolution presenting the address shall be passed by a majority of not less than two-thirds

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of the whole number of members of both Houses, and confirmed by a like resolution passed at an interval of not less than three months after the passing of the first resolution.

With these safeguards, it is scarcely possible that a resolution for independence should be carried without a predominant feeling in its favour; and, when that feeling exists, the sooner the parting is effected without soreness or heart-burning the better for both parties.

The only conditions attached to the acquisition of independence by a colony are, first, that all contracts entered into before the separation are to be maintained unimpaired; secondly, that no differential duty is to be laid on imports or exports, to or from any part of her Majesty's dominions; lastly, that no privilege or immunity is to be conferred on the subjects of any foreign nations that is not equally conferred on the subjects of her Majesty. The observance of these conditions is, of course, left to the honour and good faith of the colony.

It is possible, however, that a colony may wish to retain the advantage of a dependency without performing its duties. In that case it will be for the mother-country to take the initiative in the matter of separation. This may be done by her Majesty issuing a proclamation, declaring that a colony is to be independent from and after a time to be named in the proclamation. The colony will thereupon become independent from the date fixed by the proclamation, and the same conditions will attach as if it had presented an address asking for independence.

Surprise may, perhaps, be felt that, in a scheme professing to provide for colonies during the whole period of their existence, from infancy as settlements to maturity as independent states, no mention has

Conclusion—
Observations
on scheme of
union in
British
America.

been made of the federation of the British Provinces in North America, and that no place has been found in the proposed scheme for provisions adapted to carry it into effect.

To this it might be readily answered, that the association of a group of colonies under a general government subordinate to the English Government has no proper connection with a scheme for the adjustment of the mutual relations between the mother-country and her colonies.

When the union is complete, the united provinces will constitute a colony nobler and more powerful than the several constituent colonies, but not the less a colony within the principles and subject to the provisions of the scheme.

Moreover, the specialty of such a federation in itself places it out of the sphere of a general system, as it is impossible to lay down a general rule for the union of neighbouring colonies into different groups; the mode of union must in all cases depend on the particular circumstances and actual situation of the constituent bodies.

On the other hand, it would be inexcusable to pass over a subject of such vital interest to the prosperity of the colonies, and essential to the proper balancing of the several constituent parts of a Colonial empire.

In the first stages of settling a new country, the difficulty of intercourse naturally leads to a great subdivision of centres of government. Distance is the only cause why Canada should not send representatives to the English Parliament, and be as integral a part of Great Britain as Ireland or Scotland.

As a country becomes more civilized—above all, as railroads and better means of communication are made—the very cause of the dissociation is removed, and the

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various boundary lines between neighbouring colonies would disappear of themselves were they not strongly marked out by the stoppage of goods, the vexations of custom-houses, the difference of laws, and the thousand other inconveniences attending the passage from one country to another.

No wonder then that, in each colony that forms part of a separate group, the statesmen who rise above local jealousies should long for more extended spheres of action, and join in a strong endeavour to unite by a bond more or less intimate, according to their success in overcoming provincial prejudices, the various states to which they belong.

The title of "federation," as a designation of the tie by which the British Provinces in North America are to be held together, is not happily chosen.

A federation, properly so called, is an association of independent communities under a supreme head, which has communities only for its subjects, and does not carry down its decrees to individuals.

True meaning
of "federation."

On the other hand, a national government recognises no communities, but addresses itself to individuals only as its subjects, and makes its power felt by them through the agency of the ordinary ministers of justice.

For example, the Swiss Confederation, under the pact of 1815, was a purely federal government. The supreme body, the Diet, consisted of twenty-two members—one chosen by each of the twenty-two cantons composing the union.

The Confederation had a common army and a common treasury, supported by levies of men and money made on the several cantons in their corporate capacities.

The Diet governed communities only, and not individuals. If a citizen of Lucerne disobeyed a decree

of the Diet, he was punished by his own canton, and not by the federal power. If the canton refused its quota of men or of money, the federal power could not act through its own officers, but called on the other cantons to assist by force of arms in bringing the refractory canton to its senses.

The constitution of the United States, though federal in name, is exactly the reverse of the Swiss Confederation of 1815, except in the single fact of the Senate being elected by the States, and not by the individuals composing the States.

It is in truth a national, not a federal government, addressing itself to individuals, not to communities, as its subjects, and making its power felt through the medium of the ordinary ministers of justice. In short, a citizen of New York has a double citizenship. He is a subject of the State of New York and also of the nation of the United States, in the same manner as a freeman of London is a citizen of London and also an English subject.

With respect to federations, Mr. Chancellor Kent says, "Federal constitutions may be classed amongst the most defective political institutions which have been erected by mankind for their security. The great and incurable fault of all former federal governments, such as the Amphictyonic, the Achæan, and Lycian confederations in ancient, and the Germanic, the Helvetic and Hanseatic, and the Dutch republics in modern history, is that they were sovereignties over sovereigns, and legislations not for individuals, but for communities in their political capacity. The only coercion for disobedience was physical force, instead of the decree and the pacific arm of the civil magistrate. The inevitable consequence in every case in which a member of such a confederacy chooses to be disobedient

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is either a civil war or an annihilation of national authority.”*

The recital then in the preamble to the resolutions of the delegates, that “the best interests and present and future prosperity of British America will be promoted by a *federal union*,” is not calculated to excite prepossessions in favour of the plan.

Any misgivings raised by the preamble are not dispelled by finding a triple form of government created, with its necessary consequence, a triple division of powers. The government consists of the Queen as the head; next, of a legislature composed of a Governor and two Houses of Parliament; lastly, of the legislatures of the several component provinces: the powers, with the exception of those reserved to the Queen, styled imperial powers, are enumerated at great length, and may be classed as local, to be exercised by the central government, and sub-local, to be retained by the provincial legislatures.

A strict search, however, amidst the maze of resolutions will show that nothing can be further from the intention of the delegates than to create a *federal union* properly so called, or to set on foot a sort of triangular duel between imperial, local, and sub-local authorities. Instead of the loose organization of a dominant community governing communities, and compelling obedience to its decrees by force of arms, an intimate legislative union is proposed, fusing the different provinces into one homogeneous nation; and the local legislatures assume the character of municipal bodies,

* Kent's Commentaries, vol. i., p. 217. A modern illustration is supplied by the Swiss Confederation of 1815. It broke down in 1848, on the occasion of the revolt of the Catholic cantons, and has since been nationalized somewhat on the model of the constitution of the United States.

invested, it is true, with most useful and extensive powers, but restricted to the administration of such matters as, from their essentially local character, require a knowledge of local peculiarities, rather than an application of political experience or general principles.

The pith and marrow of the whole scheme is contained in the provisions that the bills of the provincial legislatures must be approved by the Governor-General before they become law, and that the legislative power of the general legislature is to be paramount throughout the union.

With such restrictions, no clashing can possibly take place between local legislatures and the general government, while the latter will be saved from the private bill legislation that perplexes so sorely the British Parliament.

The sovereignty of England is admitted in the most ample terms, and the loyalty of the delegates is undoubted. It is impossible, however, to suppress a feeling of disappointment at finding no intimation in the resolutions of readiness on the part of the united provinces to make up for the shortcomings of Canada, by an assertion of their intentions to put their newly-acquired frontiers in such a state of defence as befits a nation having on its borders a numerous, warlike, and aggressive population.

Possibly, however, the delegates may think that the delicacy of the relations between England and America requires equal delicacy in dealing with the complications arising out of those relations, and that questions relating to war and frontier fortifications, and to contributions of men and money, and so forth, can be better settled in the seclusion of the Colonial Office than by formal clauses in a general scheme of government.

In the foregoing observations all criticism on the details

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and wording of the scheme for the union of the British North American Provinces has been purposely avoided.

So long as the Colonies respect imperial rights and avoid federal antagonisms, they may be safely left to work out for themselves their own plan of local national government.

All that the imperial Parliament can undertake with advantage is to confirm any scheme of legislative union which, observing the above rules, may have obtained the sanction of the several provincial legislatures.

In conclusion, it is not too much to say that the successful completion of a union of the British North American Provinces will be an epoch in Colonial reform. The example once set cannot fail to be followed, and the time may not be far distant when a few large and powerful nations will cluster round Great Britain as their head, instead of scattered groups of colonies too small to stand alone, and too proud to submit to the tuition and guidance essential for their true welfare. All honour then to the good sense, patriotism, and ability of the delegates of British North America, who, triumphing over local prejudices, have, for the first time in history, shown to the world the possibility of combining a number of separate communities into one compact nation without the pressure of external war or the disturbance of internal revolution. And it is no slight argument in favour of the scheme which I have proposed, that it provides by anticipation for the next great step in the progress of these Colonies; viz., the step by which, having acquired the power of existing as an independent nation, they may acquire that independence with the hearty good wishes of the mother-country, and with the prospect of a lasting and cordial alliance with her, founded on a community of interests, of feelings, and of institutions.

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Part A

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ARRANGEMENT OF CLAUSES IN
APPENDIX.

PART I.

FOUNDATION OF NEW SETTLEMENT.

- Petition for New Settlement.
- Reference of Petition to Secretary of State.
- Survey and Government of Settlement.
- Petition of Settlement to be declared a Colony.
- Reference of Petition and effect of declaration that Settlement is a Colony.

PART II.

LOCAL GOVERNMENT OF COLONY.

- Application of Part II.

LEGISLATURE.

- Constitution of the Legislature.
- Appointment of Governor.
- Powers of Governor.
- Constitution of Legislative Council.
- Succession of Members of Legislative Council.
- House of Assembly.
- Duration of House of Assembly.
- Qualification of Electors.
- Regulations as to Legislative Council and House of Assembly.
- Constitution of Electoral Districts.
- Power of each House over its own Members.
- Election of Speaker.

PART III.

DIVISION OF IMPERIAL AND LOCAL POWERS.

- Reservation of Imperial Powers to Her Majesty.
 Rule as to aid in case of Foreign Aggression or Internal
 Commotions.
 Waste Lands.
 Original Jurisdiction of Her Majesty.
 Ecclesiastical Law.
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 Distinction between Imperial and Local Bills.
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 Governor being of opinion that a Local Bill is Imperial, to
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 Assent of Her Majesty to Reserved Bills.
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PART IV.

INDEPENDENCE OF COLONY.

- Application of Part IV.
 Legislative Council and House of Assembly may address Her
 Majesty for Independence.
 Governor to forward Address to Secretary of State.
 Consequence of Address.
 Proclamation of Independence.
 Power of Her Majesty to declare Colony Independent.
 Effect of Independence of Colony.
 Definition of "Colony."

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APPENDIX.

A SCHEME FOR THE REGULATION OF THE COLONIES.

PART I.

FOUNDATION OF NEW SETTLEMENT.

ANY number of persons, not fewer than ten, being subjects of her Majesty, may, by petition, apply to her Majesty for leave to found a new settlement in any part of the dominions of her Majesty that does not lie within the boundaries of any Colony or dependency of her Majesty.

Petition for new settlement.

The petition shall be referred to one of her Majesty's principal Secretaries of State, who shall take the same into consideration, and notify to the petitioners the approbation or disapprobation of her Majesty, in respect of the foundation of the proposed new settlement.

Reference of petition to Secretary of State.

If the assent of her Majesty is given to the petition, the said Secretary of State shall take measures for the survey and setting out of the boundaries of the new settlement, and for procuring an Order or Orders of her Majesty in Council making due provision for the good government of the said settlement, until such time as the same becomes a Colony, in pursuance of this Act.

Survey and government of settlement.

Whenever the inhabitants of any settlement made in pursuance of this Act amount in number to not less than 5000 adult males of European descent, any number of the said adults, not less than 100, may, by petition, apply to her Majesty for a declaration that the settlement is, from and after a date to be named by her Majesty, to be, and to be entitled to the title and privileges of, a Colony.

Petition of settlement to be declared a Colony.

Reference of petition, and effect of declaration that settlement is a Colony.

The petition shall be referred to one of her Majesty's principal Secretaries of State, who shall take the same into his consideration; and it shall be lawful for the said Secretary, if satisfied of the sufficiency of the population of the said settlement, to constitute a Colony, and if further satisfied that the said settlement has made all necessary provisions for the salaries and officers of the Colony, and for making compensation to any persons who may sustain any loss by the change of the said settlement into a Colony, to procure an Order of her Majesty in Council declaring the said settlement to be, and to be entitled to the privileges of, a Colony, from and after a date to be named in such Order; and thereupon such settlement shall become a Colony, and be subject to the provisions of the second part of this Act.

PART II.

LOCAL GOVERNMENT OF COLONY.

Application of Part II.

The second part of this Act shall not apply to any established Colony, but shall apply to any Colony that may be declared to be such, in pursuance of the first part of this Act.

LEGISLATURE.

Constitution of the Legislature.

The Legislature of a Colony shall consist of a Governor, and of two Houses to be called respectively "The Legislative Council" and "The House of Assembly," and herein referred to as the two Houses of the Legislature.

Appointment of Governor.

The Governor shall be appointed by the Crown by letters-patent, and shall hold office during the pleasure of the Crown.

Powers of Governor.

The supreme executive authority in the Colony shall be vested in the Governor. The Governor may call together the two Houses of the Legislature, fix their place of meeting, and prorogue them; he may also dissolve the House of Assembly when he thinks it expedient.

The Governor shall appoint to all civil and judicial offices in the Colony, the appointments to which have heretofore been made by her Majesty.

The Governor may grant reprieves and pardons for all offences committed in the Colony.

Subject to any alteration that may be made by the Legislature of the Colony, no person shall be elected a member of the Legislative Council unless he is of the age of thirty years, a natural born or naturalized subject of her Majesty, and is legally or equitably seized or entitled for his own use in possession of or to a freehold or leasehold estate in the Colony of such principal or annual value as may in the first instance be determined by the Order of her Majesty in Council.

Constitution
of Legislative
Council.

Subject to any alteration to be made by the Legislature of the Colony, the Legislative Council shall, immediately on its assembling together, be divided by lot into three classes, consisting as nearly as may be of an equal number of members. The seats of the first class shall be vacated at the end of the third year from the date of their election; the seats of the second class shall be vacated at the end of the sixth year from the date of their election; the seats of the third class shall be vacated at the end of the ninth year from the date of their election; and all members elected to fill the seats so vacated shall hold their seats for the term of nine years. A vacating member shall be re-eligible. A casual vacancy, occasioned by the death, resignation, or incapacity of a member, shall be filled up by election, as if such member had vacated his seat by effluxion of time; but the person elected in his stead shall hold his office for such period only as the member in whose stead he is elected would have held his seat if it had not been vacated.

Succession of
members of
Legislative
Council.

Subject to any alteration to be made by the Legislature of the Colony, no person shall be capable of being elected a member of the House of Assembly unless he is of the age of twenty-one years, a natural born or naturalized subject of her Majesty, and possesses such a property qualification as may in the first instance be determined by Order of her Majesty in Council.

House of
Assembly.

Subject to any alteration to be made by the Legislature of the Colony, the House of Assembly, unless sooner dissolved by the Governor, shall continue for seven years from the day

Duration of House of Assembly.

of the return of the writs for calling the same together, and no longer.

Qualification of electors.

Subject to any alteration to be made by the Legislature of the Colony, any man of the age of twenty-one years, being a natural born or naturalized subject of her Majesty, or legally made a denizen of the Colony, and possessing such a property qualification as may in the first instance be determined by Order of her Majesty in Council, shall be entitled to vote at the election of a member of the Legislative Council or House of Assembly.

Regulations as to Legislative Council and House of Assembly.

Her Majesty, by Order in Council, shall make regulations with respect to the following matters:—

- (1.) The division of the Colony into districts for the election of members of the Legislative Council and House of Assembly.
- (2.) The number of members of each House to be elected in each district.
- (3.) The qualification of electors of both Houses.
- (4.) The registration of voters, and the time of the first election for members of each House.
- (5.) The appointment of returning officers, the issuing and return of writs, and all matters and things required for insuring the orderly, effective, and impartial conduct of elections for members of each House.

But any such regulations shall be subject to alteration by the Legislature of the Colony.

Constitution of electoral districts.

In constituting electoral districts it shall be lawful for her Majesty to make any city or town an electoral district; and it shall not be necessary to use the term "electoral district" in describing the places authorized to return members, and the representation may be apportioned between towns and counties or other existing local divisions in such manner as to her Majesty may seem meet.

Power of each House over its own members.

Each House shall be the judge of the election and qualifications of its own members. It may compel the attendance of an absent member and expel a member. It may also commit any person for contempt.

Election of Speaker.

Each House may elect its own Speaker, and determine the rules of its own proceedings.

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PART III.

DIVISION OF IMPERIAL AND LOCAL POWERS.

The third part of the Act shall apply to all Colonies to which the second part of this Act is applicable; it shall also be proclaimed in every other Colony of her Majesty, and shall come into effect in each such Colony within such time, not being less than six months, nor more than two years after such proclamation, as may be fixed by the proclamation itself.

Application
of Part III.
of Act.

There shall be reserved to her Majesty the following powers and prerogatives:—

- (1.) The power of making peace and war.
- (2.) The command of any military or naval force of her Majesty in the Colony, or on the coasts thereof, and the enlistment of men in the Colony for the supply of such forces.
- (3.) The power to call out and command the militia and volunteers in time of war.
- (4.) The power of erecting forts, magazines, arsenals, dockyards, and other buildings for military or naval purposes.
- (5.) The power of taking waste land, and, on making due compensation, any other land, for the purpose of erecting such forts, magazines, arsenals, dockyards, or other buildings as aforesaid, and for any other military or naval purpose.
- (6.) The exercise of exclusive jurisdiction within any places so taken.
- (7.) The power of sending and receiving ambassadors and consuls to and from, and of making treaties and regulating commerce with, any foreign nation.
- (8.) The determination of questions of prize and booty of war; the definition and punishment of offences against the law of nations; and the definition and punishment of offences committed in violation of any treaty made, or hereafter to be made, between her Majesty and any foreign nation.
- (9.) The power to fix the boundaries of the Colony.
- (10.) The power to regulate commerce between the Colony and any other part of her Majesty's domi-

Reservation
of imperial
powers to
her Majesty.

nions, and to conduct the transmission of letters by sea between the Colony and any other place.

- (11.) The coinage of money; the regulation of the value of foreign money; the making anything but gold and silver a legal tender; and the fixing the standards of weights and measures.
- (12.) The passing laws relating to bankruptcy and insolvency, to slavery and the slave-trade, to treason, alienage, denization, and naturalization, to copyright and other exclusive rights to the use or profits of any works or inventions.
- (13.) The appellate jurisdiction of her Majesty in suits arising in the Colony.
- (14.) All powers incident to, or necessary for, the due carrying into effect the above-mentioned powers and prerogatives.

Rule as to aid in case of foreign aggression or internal commotions.

Her Majesty undertakes to protect the Colony from the aggression of foreign nations, in the event of the Colony rendering, for its own defence, such assistance to her Majesty, by contributions of men and money, or otherwise, as her Majesty's advisers may deem sufficient, having regard to the wealth, population, and situation of the Colony.

The Colony shall protect itself against internal commotions and native tribes, and, in the event of its requiring aid from her Majesty in providing such protection, it shall be granted on such conditions, as to the protection of the native tribes and the allotment to them of separate lands, as to her Majesty may seem meet; and all expenses incurred by her Majesty in rendering such protection shall be defrayed by the Colony.

Waste lands.

Subject to the powers over waste lands hereinbefore reserved to her Majesty, the Legislature of the Colony may dispose, for the benefit of the Colony, of any waste lands within its boundaries (including minerals of every description), and of all fines, escheats, and forfeitures, reserving to the parties entitled thereto the benefits of all grants of land, and all contracts for grants of land made or entered into previously to the time at which this Act takes effect, and reserving to the natives any rights or privileges, or any interests in land to which they may be entitled.

Original jurisdiction

Her Majesty in Council shall have original jurisdiction in all cases of judicial cognizance, whether civil or criminal, in

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which any power or prerogative reserved to her Majesty is brought into question, with power to establish any court in the Colony for the trial of such cases, or to assign any part of the jurisdiction of her Majesty in Council, or remit any case to the courts of the Colony.

of her Majesty in Council.

The ecclesiastical law of England shall not be deemed to be in force in any Colony, except in so far as it is adopted by the Legislature of the Colony.

Ecclesiastical law.

The Legislature of the Colony shall have power to repeal or alter any law in force within the Colony, including the provisions of this Act, and to make new laws for the government of the Colony, as fully as the United Parliament of Great Britain and Ireland have power to repeal or alter any law in force within the realm of Great Britain and Ireland, and to make new laws for the government thereof, subject to the regulations hereinafter contained with respect to bills relating to or affecting any of the powers or prerogatives hereby reserved to her Majesty, or relating to or affecting any of the provisions of this Act, except such as are declared to be subject to alteration by the Legislature of the Colony, and subject also to the restrictions following :—Firstly, that no person holding any office, or entitled to any emolument in the Colony under any appointment made before this part of this Act takes effect in that Colony, shall be deprived thereof by any Act of the Legislature, unless due compensation has been made to him, and in case of dispute the amount of compensation shall be determined by the Governor, whose decision shall be final; but this proviso shall not preclude the exercise by her Majesty, or any body politic, body corporate, person or persons, of any power of deprivation or reduction that may have existed before the time at which this part of this Act comes into operation in the Colony. Secondly, that no Act of the Legislature shall make a judge's tenure of office dependent on anything but good behaviour, or diminish his salary during his continuance in office.

Power of Colonial Legislature to make laws.

A bill relating to or affecting any of the powers or prerogatives reserved to her Majesty, or relating to or affecting any of the provisions of this Act, except such as are declared to be subject to alteration by the Legislature of the Colony, is hereinafter called an "imperial bill;" all other bills are called "local bills."

Distinction between imperial and local bills.

Assent of
Governor.

No bill, whether imperial or local, shall be of any force until it has been assented to by the Governor on behalf of her Majesty. In the case of local bills, the assent or dissent of the Governor shall be expressed thereto before the close of the session in which they have been passed, and no instructions shall be given to the Governor on the subject of giving his assent to local bills.

Governor,
being of
opinion that
a local bill
is imperial,
to submit
question to
Colonial
judges.

If any bill presented to the Governor as a local bill appear to him to be an imperial bill, he shall, without delay, submit such bill to three of the principal judges in the Colony, who shall certify to him their opinion; and, according to the tenor of the opinion of such judges, or the majority of them, such bill shall either be dealt with by the Governor as a local bill, or be remitted by him to the Legislature for presentation as an imperial bill, in manner hereinafter mentioned.

Local bills,
when
assented to, to
be forwarded
to Secretary
of State.
Imperial
bills to be
accompanied
by address.

The Governor shall, at the earliest opportunity, forward to one of her Majesty's principal Secretaries of State, for the information of her Majesty, all such local bills as have been assented to by him.

Imperial bills presented to the Governor for her Majesty's assent shall be accompanied by an address of both Houses of the Legislature, stating such bill to be imperial, and praying her Majesty's assent thereto.

Assent of
Governor to
imperial
bills.

The Governor shall, in assenting to, dissenting from, or reserving for the signification of her Majesty's pleasure any imperial bill, conform to any instructions that may have been given to him, provided that no instructions shall preclude him from the option of dissenting from or reserving any such bill, and that it shall be imperative on him to declare such assent, dissent, or reservation as aforesaid before the close of the session in which such bill is passed.

Copies of
bills to be
forwarded to
Secretary of
State.

The Governor shall, at his earliest opportunity, forward to one of her Majesty's principal Secretaries of State authentic copies of all imperial bills which have either been assented to or reserved by him.

Secretary of
State may
disallow
imperial bills
assented to
without
authority.

If it appear to the Secretary of State that the Governor has assented to any imperial bill in the absence of, or in contravention of instructions, her Majesty may, at any time within two years from the receipt of such bill by the said Secretary of State, disallow the same by Order in Council; and, upon such disallowance being certified under the hand

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and seal of the said Secretary of State to the Governor, he shall signify the same to the two Houses of the Legislature by speech or message, or by proclamation in the government gazette of the Colony, and thereupon the said bill shall be annulled and avoided.

If it appear to such Secretary of State that any bill which has been assented to by the Governor as a local bill is, in fact, an imperial bill, he is hereby empowered, notwithstanding any opinion to the contrary expressed by the Colonial judges, to submit such bill to the determination of the Judicial Committee of the Privy Council, or any three or more of them, who shall certify to him their opinion respecting such bill; and if their certificate declare such bill to be an imperial bill, it shall thereupon be subject to disallowance under the provisions hereinbefore contained, in the same manner and to the same extent as if the same were an imperial bill to which the Governor had assented without authority.

No reserved bill shall be of any force in the Colony, unless her Majesty in Council expresses her assent thereto within two years from the date of such bill having been presented to the Governor; and no reserved bill, when so assented to by her Majesty, shall come into operation in the Colony until from and after such time as the Governor has, by speech or message to the two Houses of the Legislature, or by proclamation, signified that her Majesty has been pleased to assent to the same, and thereupon the said bill shall become law in the Colony.

It shall be lawful for her Majesty, in the case of reserved bills and bills subject to disallowance, instead of wholly declining to assent to or disallowing such bills, to add amendments thereto, and to return the same so amended to the Governor, to be submitted by him to the two Houses of the Legislature, who shall be at liberty to take the same into consideration, and to agree with or reject, either wholly or partially, or add amendments to the bill so submitted to them.

The Governor shall, in the event of both Houses of the Legislature accepting all the amendments made by her Majesty in such bill, assent to the same in her Majesty's name; but, in any other event, the bill shall be treated as if it were an ordinary imperial bill that had originated in the Legislature.

Secretary of State, being of opinion that a local bill is imperial, to refer question to three judges.

Assent of her Majesty to reserved bills.

Power of her Majesty to make amendments in proposed bills.

Assent of Governor to amended bills.

PART IV.

INDEPENDENCE OF COLONY.

Application
of Part IV.

This part of this Act shall apply to all Colonies to which the second part of this Act is applicable. It shall also be proclaimed in every other Colony of her Majesty, and shall come into effect in each such Colony within such time, not being less than six months, nor more than two years, after such proclamation, as may be fixed by the proclamation itself.

Legislative
Council may
address her
Majesty for
independence.

The Legislative Council and House of Assembly in any Colony may, by a majority of not less than two-thirds of the whole number of members composing each House, resolve to address her Majesty, praying that the Colony may be declared to be independent; but such resolution shall be of no effect unless it is confirmed during the same session in both Houses by a like resolution, passed by a like majority, at an interval of not less than three months after the passing of the first resolution.

Governor to
forward
address to
Secretary of
State.
Consequence
of address.

The Governor shall, at the earliest opportunity, forward to one of her Majesty's principal Secretaries of State any address passed in manner aforesaid.

Upon the receipt of such address, the said Secretary of State shall submit the same to her Majesty; and it shall be lawful for her Majesty to grant or withhold, either altogether or temporarily, and either with or without conditions, her assent to the address of the Colony.

Proclamation
of independ-
ence.

The assent of her Majesty to the address of a Colony praying for independence shall be proclaimed in the Colony, and the Colony shall become independent from and after the time of such proclamation being made.

Power of
her Majesty
to declare
Colony to be
independent.

Her Majesty may, by proclamation in any Colony, declare that Colony to be independent from and after a time to be named in such proclamation; and the Colony with respect to which such declaration is made shall become independent from the date therein mentioned.

Effect of
independence
of Colony.

A Colony, when become independent in pursuance of this Act, shall form no part of the dominions of her Majesty, and shall be in all respects in the same situation as an independent

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state; but it shall be deemed to have entered into a treaty with her Majesty to the following effect:—

- (1.) That no law shall be passed in the Colony impairing the obligation of any contract entered into previously to the date of the independence of the Colony.
- (2.) That no differential duty shall be laid on imports or exports to or from any part of her Majesty's dominions.
- (3.) That no privilege or immunity shall be conferred on the subjects of any foreign nation that is not equally conferred on the subjects of her Majesty.

For the purposes of this Act, "Colony" shall not include any part of her Majesty's dominions in India or Malta, Gibraltar, or Heligoland, or any other dependency under the immediate government of the Crown. Definition of
"Colony."

