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G. M. Fairchild Jr.
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A COLONIAL DEPARTMENT MINUTE
DATED APRIL 30th, 1836.

LOWER CANADA AFFAIRS IN 1836

A statement of the controversy and deadlock
existing between the Lower Canada As-
sembly and the Executive, and the
causes leading thereto, with
some suggestions for their
removal and certain
reforms to be
effected

Edited and annotated by

G. M. FAIRCHILD, Jr.

AUTHOR OF

"From My Quebec Scrap Book," "Gleanings From Quebec,"
"A Ridiculous Courtship," "An American Prisoner at
Fort Malden and Quebec in 1812," Etc.

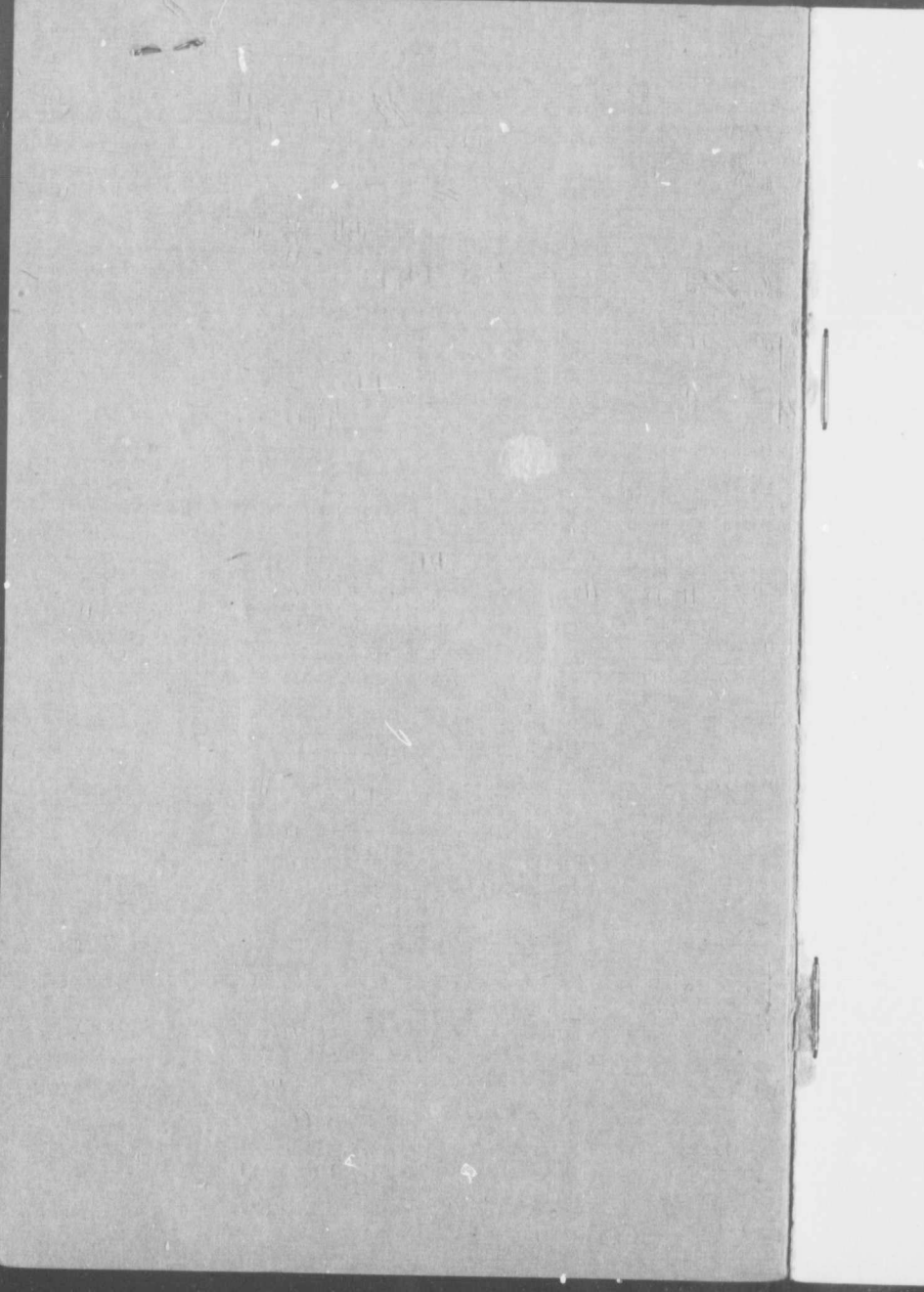


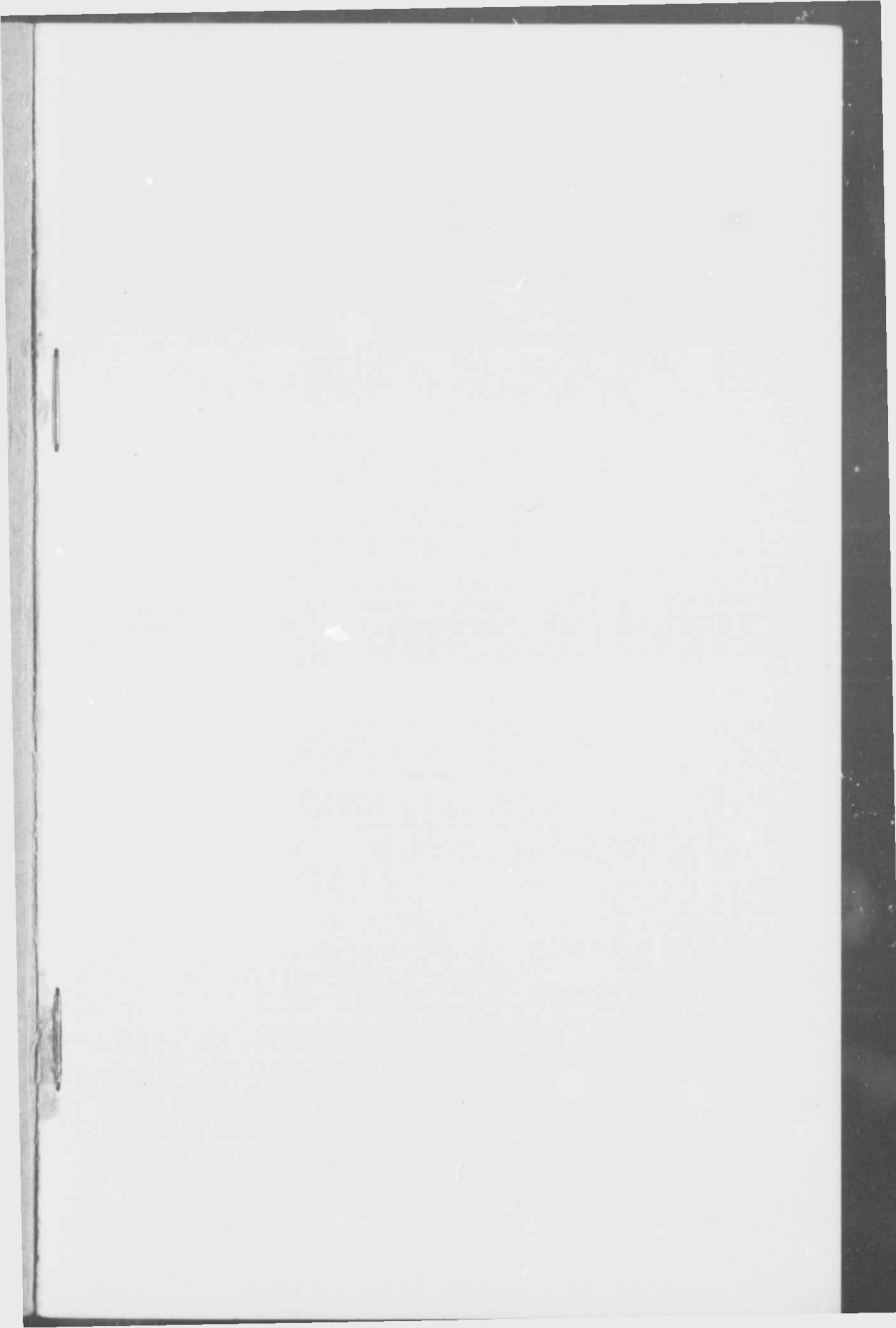
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FOREWORD.

The MS., from which this pamphlet is printed, came into my possession many years ago by purchase at a bookstall in New York. It is a Colonial Department Minute of the 30th of April 1836, and relates more particularly to the affairs of Lower Canada at this very disturbed period in the history of that Province. This document was evidently prepared in the Colonial Department for the information of His Majesty's Government or to be placed before the British Parliament, probably the former. Who its author was I have no knowledge as there is no name attached to it, but every page of it attests the writer's intimate acquaintance with Canadian affairs, and the causes that had led to the revolutionary state in the province of Lower Canada then existing, and that culminated in 1837 in open rebellion. The document is a wise one and temperate in tone. A broad statesman-like view is taken of the grievances of the French Canadians and their causes, while the various resources of the Home Government for their abatement are considered from the point of view of concessions to the Provincial Assembly. The relation of the Provincial Council to the popular chamber was not unlike that at present existing between the Lords and Commons, and the author of this document might be writing upon the present controversy so aptly do his arguments

apply. Happily, since Confederation, and Provincial autonomy, these burning questions have not arisen in our Parliaments, as the executive authority practically rests in them and not with the Governors in Council as formerly. A careful perusal of this document will convince the most skeptical Canadian reader that there were English statesmen of that period far seeing and without prejudice, in whose hands Colonial affairs might have been safely entrusted, and from whom the Colonies would have obtained careful hearing and every measure of justice. Such men penetrated the future and pictured the greatness of the North American Colonies if they could be brought to hold together.

Whether this minute is among the printed English Blue Books I have been unable to discover. I submitted the MS. to the late Douglas Brymer, Dominion Archivist, who asked my permission to have it copied for the Archives. This was granted, and a copy of it no doubt exists at Ottawa.

A statement of the condition of affairs in Lower Canada preceding the date of this document I do not consider necessary as an introductory, as the document is one that will only possess an interest for the student of the history of the period preceding and leading to the Rebellion of 1837 in Lower Canada.

G. M. FAIRCHILD, JR.

Quebec, Aug. 1910.

Lower Canada Affairs in 1836

In the voluminous Appendices¹ which accompany this Minute will be found such information as it has seemed necessary to bring together, in order to throw a clear light upon the questions connected with British North America awaiting the decision of His Majesty's Government.

In the following pages an acquaintance with the contents of those Appendices is presupposed; and on the supposition an attempt will be made first to state, and then as briefly as may be, to consider, the various questions in which this protracted controversy has at length issued. That statement will however be prefaced by a few general remarks, some of which may indeed be thought too obvious to require a formal announcement. They may perhaps however tend to supersede or to abridge discussions which in the sequel might otherwise be unavoidable.

The ultimate objects of the Policy of the British Government in relation to the North American Provinces, are few and simple. Every end which

1. The appendices were missing from the minute.

is really desirable would be fully accomplished, if adequate security could be taken for maintaining the connexion between the two Countries as Members of the same Monarchy—if the outlet for poor emigrants could be kept open—and if those commercial interests which may be supposed to depend upon the colonial character of the Canadas, of New Brunswick, and of Nova Scotia, could be protected.

In pursuing these objects, no measure could be prudently taken with a view to it's effect upon a single Province only. The interests of the whole are so complicated with each other, that for any such purpose they must be regarded as one great community.

No settlement of the existing controversies is fit to be adopted which would provide nothing better than a momentary respite from existing embarrassments. A short truce which had no tendency to bring about an abiding pacification, would rather exasperate than cure the disorder.

The population of British North America is not less than 1,200,000 souls. They are already assuming a distinct National character ; and the day cannot be very remote when an Independence, first real, and then avowed, will take the place of the present subjection of these Provinces to the British Crown. The tendency to this result might easily be proved, if proof were necessary. But for the present purpose the existence of that tendency is assumed, with a view to the remark that the event is and from which it would be equally unwise and useless

to avert our thoughts. A forecasting Policy would appear to suggest that provision should be deliberately, though of course unavowedly, made for the peaceful and honorable abdication of a power, which ere long it will be impossible to retain ; and for raising up on the North American Continent a counterpoise to the United States ¹.

In a paper which has been drawn up on this occasion, another general principle is stated in the following terms:—"The British Colonies in North America are fast rising into considerable States, and already are far too powerful to be governed upon any principle but that of deference for the wishes and opinions of the great Body of the inhabitants. The authority of the Mother Country rests altogether upon the respect and voluntary obedience of the colonial subjects."

Finally, the present is an occasion in which inaction is probably the most hazardous policy which could be pursued. To do nothing is indeed easy ; but to determine that nothing shall be done, is impossible. In such a current there is no resting on the Oars : if its force can neither be stemmed nor directed, it will infallibly hurry every thing before it.

Such are the more general views, of which the truth is taken for granted in the following pages. They will be seen to have a direct bearing upon the questions which are now to be considered.

1. This has been in great part brought about, but British connection has still been maintained.

It is first to be considered, by what means provision can be made for the debt due to the King's Officers in Lower Canada, and for the future charge of Governing that Province ¹.

Lord Gosford and his Colleagues concur in recommending the repeal or suspension of the Statute 1st and 2nd Wm IV, Ch : 23. That act transferred to the Assembly the appropriation of the Parliamentary Duties of 1774. If it should be repealed, the Lords of the Treasury would have at their disposal an income of about £31,000, which added to the present Hereditary Revenue, would provide about £54,000 per annum, applicable under Treasury Warrants to the charge of the Civil Establishment of Lower Canada. It would more than defray the whole of that charge. As far therefore as the immediate Financial difficulties of the Crown are concerned, the remedy would be effectual and complete. What new difficulties it would create remains however to be considered.

First,—it is a circumstance worthy of careful notice that hitherto the British Legislature have been no parties to the Canadian controversy. The House of Commons has even anxiously abstained from an engagement in it. The Committee of

1. Lord Gosford, Sir Chas. Grey and Sir James Gibbs were appointed Royal Commissioners in 1835 to enter upon an enquiry into Lower Canada affairs. Their report was laid before the Imperial Parliament early in its next session. It recommended expenditure of the public income without the concurrence of the Assembly ; and if the latter refused to submit, that the members should be coerced.

1828 and of 1834 dissuaded any Parliamentary interference, and advised that the subject should be referred exclusively to the conduct of the Executive Government. This kind of neutrality of Parliament has been dictated by much apparent wisdom. It has left open a resource to which resort might be had upon any extreme emergency. It has given to the contest an administrative rather than a National character. It leaves the door of hope open, and raises a barrier against those precipitate movements to which in the excitement of local dissensions men might otherwise be hurried. The reverence with which the House of Commons, especially in its reformed character, is even yet regarded in British North America, is a spell not to be broken except at the bidding of inevitable necessity.

To invoke the aid of Parliament in vain, would be ruinous to the object in view. To invoke it successfully, would be to commit the Legislature to a strife from which, when once engaged in it, they could scarcely retreat at all, and could certainly not retreat except with a complete triumph, or with signal disgrace. Any Minister who should apply to Parliament for support, would have given to the whole controversy a new critical and irretrievable character, whatever might be the result of his application.

Suppose however the Statute 1st and 2nd Wm IV to be repealed. What are the consequences to be anticipated? This question is proposed and answered by the Commissioners collectively, and

by Sir George Gipps separately. The following are extracts from the joint Report.

“ So great indeed will be the powers remaining
“ to the Assembly, that doubts have been suggested
“ whether the alteration of the 1st and 2nd Wm
“ IV Cap : 23, though it may abate the immediate
“ difficulties of the Province, will be of any permanent
“ avail. In this point of view it is observed
“ that the Assembly may continue it's war upon
“ the Co-ordinate branches of the Legislature ¹ with
“ more violence than ever ; that the resumption
“ of the Duties under the 14th Geo : III, C. 88,
“ will only restore the Government to the same
“ position in which it maintained an unsuccessful
“ conflict with the Assembly in former years ;
“ and therefore that it would be better at once to
“ advance a step further, and suspend the constitutional
“ Act of 1791 for a limited number of years.”

In his Separate Minute, Sir George Gipps has made the following remarks on this subject :

“ The Assembly, even when deprived of the Revenue
“ of the 14th Geo : III, will retain its control
“ over funds nearly twice as great as those in the
“ hands of the Executive ; and although the House
“ may not have power to dispose of them at it's
“ discretion, it will, at any rate, be able to lock
“ them up, and especially to prevent the application
“ of them to any purpose favorable to the Government,
“ or to the interests of the British party.

1. The Legislative Council.

‘ It may also refuse to pass Bills required by the
“ Commercial Interest ; such for instance as Bills
“ for the renewal of the Charters of the Quebec
“ and Montreal Banks, both of which will expire
“ in July 1837. When I consider therefore, the
“ bitter hostility, or rather fury, with which the
“ Assembly will be animated against the British
“ Government and against British interests ; the
“ invectives which, under the direction of it’s prac-
“ tised leaders, it will pour forth against England ;
“ the power it will possess of spreading disaffection
“ within the Province, and inviting interference
“ from without, I am at a loss to imagine how the
“ Government can be carried on with advantage ;
“ and I cannot help fearing that we shall ultimately
“ be driven to abandon the country, with all the
“ shame of failure upon us, or to maintain it at a
“ cost infinitely beyond it’s value.

“ It may be said, on the other hand, that I have
“ drawn an exaggerated picture of the difficulties
“ which the Government will have to encounter,
“ —that these difficulties will be found to melt
“ away under a firm yet liberal and impartial admi-
“ nistration,—or that a sense of patriotism, or even
“ of self interest, will lead parties to act in harmo-
“ ny ; and this more especially, should the sense
“ of Parliament against their recent proceedings
“ be unequivocally pronounced ;—all this may, I
“ admit, (and sincerely do I hope it,) come to pass,
“ under a wise and firm administration. But never-
“ theless, I cannot but feel an apprehension that

"it will be otherwise, and entertaining such a feeling, I think it right to express it."

Such are the results which the commissioners anticipate from the adoption of their own advice. They have however done less than justice to the subject. The truth of that assertion may be readily established.

The Reports, whether joint or separate, scarcely allude to the effect which this Repeal would produce in the adjacent Provinces. Yet who can doubt what that effect would be. The temper of Upper Canada is scarcely less excited than that of the Lower Province. The cession of the Revenues of 1774 was made to them both at the same moment and by the Statute which it is now proposed to repeal. If the Lower Canadian resented that repeal as an immediate injury, the inhabitants of the Upper Province would not less strongly resent it as an implied and injurious menace. The principle would apply equally to both, though, for the moment, the effect might be confined to one. Throughout British North America it would be represented perhaps with truth, but doubtless with plausibility and success, as a violation of the solemn pledges of 1778 and of 1791, and as a disregard of the principles laid down by the Canada Committee of 1828, ¹

1. This committee after a prolonged debate in Parliament was formed, and after hearing the evidence of both sides to the controversy in Upper and Lower Canada, it made its report to the House, but the sentiments expressed in it were neither formally adopted nor yet repudiated. These views were practically an acceptance of the claims made by the Lower Canada

and afterwards affirmed by Sir George Murray, by Lord Ripon, and by Lord Glenelg. The change of broken faith would be echoed from every part of the North American Continent. The proof would be short, simple, and intelligible. The refutation must be long and unavoidably obscure. If we disarmed the popular Leaders of some financial authority, we should increase in a ten fold proportion their moral influence.

But even the Financial weapons of offense which they hold at present in their hands would not be wrested from them. In years of tranquility, the annual expenditure of Lower Canada falls but little short of £180,000. Even after the repeal of the 1st and 2nd Wm IV, it would yet be in the power of the Assembly to stop more than two thirds of the whole annual Supplies. It is true that the blow would be directed—not against the King's Officers—but at their own Constituents. They would suspend all Public works : They would leave the roads bridges and canals without repair : The Light-houses would be shut up, the Quarantine Establishments abandoned, and all the Parochial Schools closed : The country would be placed under a kind of interdict. Public fury would be directed not against Mr Papineau and his friends as the

Assembly with some few modifications. Sir Geo. Murray the successor to Mr. Hucksion in the Colonial Office promised to accede to the committee suggestions wherever practicable. He recalled Lord Dalhousie from the Governorship and replaced him with Sir James Kempt, and there for the moment the matter was left.

immediate authors, but against the British Government as the promoters, of these public calamities. What better could the inveterate enemies of that Government desire ?

It is not difficult to trace out the further course of these hostilities. The Assemblies would denounce as an Enemy to his country every man who issued or received money under the proposed Act of Parliament : They would proceed against such Officers by Commitment for contempt of their House : They would refuse to pass any Bills or to transact any business until they had obtained the most ample reparation. In short, they would urge the quarrel to a point in which Parliament would be reduced to choose between retracing their measures, or suspending the Constitution of 1791 altogether ;— that is, between intolerable humiliation and Civil war.

Now what are the counsels which, in the anticipation of such results as these, the Commissioners have given ? ¹ “ We know not ” they say “ whether “ we way venture to expect it, but it is *proper to* “ *hope* that the reasoning may be mistaken which “ assumes that the Assembly will push to further “ extremities a desperate contest with the Imperial “ power. By the measure under consideration it “ would for the first time learn that the Mother “ Country may exercise another Office besides “ that of yielding ; and that when there has been

1. Lord Gosford's Commission of 1835-36.

“every recent mark of respect and concession on
“the one hand, it may be prudent to meet it with
“some forbearance on the other. If this should
“not be the issue, but on the contrary the assembly
“should drive the Mother Country to either renewed
“efforts of control or else the abandonment of every
part of the Constitution which the third Branch of the
Legislature may invade, *it will be time enough* to de-
termine upon the measures required by such an
emergency when their necessity shall be proved by
the event, and not upon its mere apprehension.

Surely this is a very unsatisfactory solution of a
difficulty so plainly foreseen, and so formidable
when it shall arrive. It will then, it is said, be
time enough to determine upon the measures required.
No doubt if a particular course of action be plainly
inevitable, it is best not to enfeeble the mind by
too close a contemplation of the dangers which
may possibly arise. But if it be possible to decline
the path which will involve us in them or if we can
distinctly perceive that they must be encountered,
it is any thing but wisdom or true courage to avert
the eye from their approach, in the hope that in
the very moment of peril some scheme may suggest
itself for escaping unhurt. If by repealing the
Statute 1st and 2nd Wm IV there is a moral cer-
tainty that the Canadian Assembly will be provoked
to a desperate use of its remaining powers of hostile
action, and that in this effort they will be supported
by British North America and encouraged by the
people of the United States, what would it be but

suicidal temerity to plunge into such a scene of difficulties in the vague belief that something will turn up for our rescue.

But the repeal of the Statute in question is not the only scheme suggested by the Commissioners. Sir George Gipps and Sir Charles Grey have each in his separate Minute proposed an application to Parliament for a vote of money. ¹ Sir George Gipps however passes from that suggestion with the remark that it is probably impracticable. I understand him to doubt the willingness of the House of Commons to make such an advance. Sir Charles Grey refers to the same scheme, merely as a resource to be substituted for the other plan, in the event of any unexpected objection to it.

Waving the question how far the House of Commons might be disposed to vote the money, the other objections to this mode of proceeding are far from inconsiderable.

In the first place, it would commit Parliament to the controversy with the Colonies ;—a result to be deprecated, for the reasons already noticed.

Next, although free from those imputations of breach of National faith by which the other scheme would be assailed, it would provoke a Resentment and resistance scarcely less bitter and obstinate. The purse of Great Britain is a sharper weapon than her sword, and the use of it to defeat what the Assembly regards and asserts as a Constitutional

1. To carry on the Government of Lower Canada.

right, would be regarded throughout the Provinces as an injury the more intolerable because so apparently easy of perpetration, and to the continuance of which they at least would think that there was no assignable limit. Nor can it be denied that such an intervention, unless employed most cautiously and infrequently, would reduce the powers of the Assembly to an empty boast.

The whole annual expenditure of the Province might be borne by this Country with no perceptible addition to our burthens, and however well we may be convinced that the danger is imaginary, they would really think, and plausibly represent it to be our purpose to overwhelm with our money, privileges otherwise unassailable.

In fact however it is not to be doubted that an annual Estimate for Canada, or even a second vote for that service, would not be adopted by the House of Commons, and could not be recommended to them. This plan therefore, while it meets the evil of the moment, leaves the future unprovided for, and with the next Session of the Assembly, would infallibly arrive the day of revenge for our having rescued their victims from their grasp.

To either of the methods already suggested there is yet a further objection of great apparent force. It would seem impossible to invoke the interposition of Parliament except upon a full explanation of the policy which the Government intended to pursue towards the North American Provinces. The Legislature could hardly be expected or asked

to commit themselves as parties to a contest of which the principles and the objects should not be disclosed to them. Is it practicable for the Government now to make that disclosure.

In June 1835 a Commission was sent to Lower Canada superseding the plan of the former Administration which had designed rather to act at once, than to await further intelligence. The necessity of additional information was asserted in the strongest terms. That information has not yet arrived. With what consistency or dignity could a resolution be taken and announced now upon the main subjects of that enquiry. To avow the purpose to concede under such circumstances, would be to acknowledge the irresistible power of the Assembly. To announce a purpose to resist, would be to pre-judge the results of the investigation, To say that there was no fixed purpose whatever, would be to raise a great if not insuperable obstacle to the success of the application for money. Is there any distinct and sure escape from this dilemma ?

To avoid the necessity of applying to Parliament and of unfolding purposes still immature, it has been suggested that the Governemnt might raise Funds adequate to the existing emergency by the Sale or Mortgage of Land in Canada. It is not probable that the Treasury would have any real difficulty in effecting such a Loan, because the Lender would well understand that in case of need Parliament would protect him from Loss. The Government might announce to Parliament that

such a transaction had taken place and might justify it on the ground of their disinclination to make the Legislature Parties to the contest unless as a last and inevitable resource, especially at a moment when they were unavoidably unprepared to give those explanations to which the two Houses would be entitled if asked to contribute in any manner to the promotion of the policy of the Ministers of the Crown.

To this suggestion it is understood however that those best qualified to judge entertain objections so insuperable, that the further discussion of the plan in this place would be superfluous.

Then however arises the question whether it be really indispensable to provide at all for the payment of the remaining Arrears before the arrival of the Commissioners Report upon the main subjects of their enquiry, and before the decision either to resist or to concede shall have been finally adopted. After a review of all the information which the Commissioners shall collect, and of all the Councils which they may offer. If it be possible yet to retain the conduct of these affairs in the hands of the Governments without invoking Parliamentary interference, the advantage of that course of proceeding would seem indisputable.

The objections to leaving matters in their present state are, first, that in contemplation of the emergency which has arisen, the Government pledged themselves by Lord Glenelg's Instructions to Lord



Gosford to apply to Parliament, and to do what ¹ might in them lie for the relief of the Public Officers, and secondly, that to leave those Officers in a state of want and suffering would be at once unjust to them, and disgraceful to the Royal Authority.

It is answered that the case which has occurred is not exactly that in contemplation of which the pledge was given, because the Assembly did Vote part of the Supplies, which were lost by a subsequent decision of the Council. If the six months supply Bill had passed both Houses, it may be doubted whether the Public Officers would have been entitled to ask the immediate interposition of the Government to procure for them the Balance. Does that right accrue to them because the Grant of the Assembly has been defeated by the opposition of the Council? Is not the dignity of the Crown sufficiently saved by the partial, though in the result, ineffectual acquiescence of the Assembly in the King's demands?

These questions are proposed merely for consideration without any attempt to solve them.

The question however must be considered on the supposition that there is no escape from the necessity of applying to Parliament for pecuniary assistance, and that such an application would involve the additional necessity of disclosing without further delay the opinions and purposes of the Ministers

1. One of the main disputes between the Legislative Assembly and the Executive was the refusal of the former to vote supplies for the payment of the Executive branch of the Government.

of the Crown upon the proposed changes in the constitution of the Legislative and Executive Councils. With a view to this result it is necessary to enquire first, whether any change ought to be made in the constitution of the Legislative Councils throughout British North America, and if so, what is the principle upon which any such alteration ought to proceed? the subordinate details may be reserved for future consideration.

It ought then to be clearly understood that so far as respects the Legislative Council, the Canadian Constitution is a mere experiment for which no precedent can be found in any other Dependency of the British Crown. Throughout the British Colonies as now existing, there is not to be found, nor does the History of the United States before the Revolution supply an example of a Legislative Body of which the Members held their Offices for Life on the nomination of the Crown, or were confined exclusively to Legislative duties. In all other Colonies the Councillors have been either elected by the People or appointed during the pleasure of the King and they have been not so much a separate Estate dividing with the Assembly the powers of Legislation, as an Executive Council for the advice and assistance of the Governor in the Administration of Public Affairs, without whose previous concurrence he could not assent to any Bill passed by the Representatives of the people. According to the original design and early practice of the Colonies, all Laws originated with the Assemblies, and

were then accepted or rejected by the Governor in Council, the King reserving to himself an ultimate veto. In later times the Governor has by a tacit encroachment been excluded from the Council when meeting in the old Colonies on Legislative Business. And even to this day he not rarely consults with the Council in their Executive capacity whether he shall not assent to acts which they have passed in their Legislative character.

In the Year 1791 this ancient Colonial policy had fallen into that disfavor so naturally resulting from the events of the American War, and Mr. Pitt and Lord Grenville yielding perhaps rather to the excitement of that day, than to the guidance of their own judgement, projected the creation in Canada of an Hereditary Aristocracy of which the nucleus was to be formed out of a distinct Legislative Council holding their Offices for Life on the nomination of the Crown, and susceptible in that character of Titles of Honor, which when preferred were to descend like English Peerages to the Eldest Sons, and to give to him a Seat in the Legislative. Thus it was supposed that a sort of Image or Antitype of the British Constitution would be established on an American Continent, operating as a sort of counterpoise to the Republicanism of the United States, and creating a moral obstacle to the Union of the Canadas with it. The King and His Cabinet were to be represented by the Governor and the Executive Council,—the Houses

of Lords and Commons by the Legislative Council and the Assembly.

It is no presumption at this distance of time and with the advantage of having witnessed the result of the experiment, to say that the policy pursued by Mr. Pitt in this instance, rested upon no solid basis whatever, but upon an analogy altogether illusory and superficial. Mr. Fox distinctly foresaw and as distinctly pointed out the objections to this scheme. But partly the Antigallican spirit of those times, and partly the Dramatic interest of the occurrence which distinguished the Debate on the Quebec Bill, overbore all other considerations ; and Parliament resolved to attempt the transplantation to the Soil of America of the British Constitution in what was then thought an about perfect epitome of the original.

Many Years elapsed during which the experiment was not subjected to a real trial. From 1793 when the Canadian Assemblies began to act until 1815 when the second War with the United States was brought to the close, the French Canadians submitted in the spirit of their Ancestors to the rule of their Governors with almost servile acquiescence, dissatisfied only when the Governor did not make striking and vigorous use of his powers. The English Inhabitants in either Canada were few and widely dispersed, and sympathized strongly in the varying fortunes of the Mother Country. On the Invasion of the Americans they displayed even a passionate spirit of loyalty and bore without

repining the brunt of a control in the grounds of which they had not the most remote interest. But the return of peace bringing with it wealth and many new Inhabitants, and a comparatively concentrated population rapidly dispelled the previous calm, and the several branches of the Provincial Constitution called their hitherto dormant powers into active exercise. It was then immediately discovered that the different parts of the Political Machine were wholly unfit to work together. The Governor regarded with aversion and not seldom with contempt a Body of Executive Councillors who having no function but that of controlling his will by unwelcome advice, were continually left for many months together in a state of utter inaction and insignificance. They met to perform a few formal duties. Occasionnally they were called together to relieve the Governor from some fatiguing investigation or some dangerous responsibility, but otherwise he acted alone and without reference to them for advice.

The Legislative Councillors again were speedily taught that they had been summoned by the King to an indivious superiority over their fellow Colonists without acquiring any one of those resources on which the authority of the Peers of Great Britain reposes. They were sustained in the exercise of their Office by a solitary Act of Parliament, and by nothing more. They found themselves a mere Oligarchy of Yesterday, taking the place and asserting the privileges of an Hereditary Aristocracy.

They could appeal to no ancient prepossessions, to no traditional fame, and to no prescriptive rights. They had not even the resource of wealth or Family connexions, or personal endowments in any superiority to other Gentlemen of their own Class in Society. Power never was, or could be presented in a more crass, unprotected, and invidious form.

The consequence was such as Mr. Fox had foreseen. The Representatives of the People assailed the Nominees of the Crown with the utmost possible animosity, and advantage. The Council defended themselves by lofty assertions of their own rights, and by courting the alliance of the local and the European Government. In the struggle which ensued the Assembly plunged into many reckless measures assured that they would be counteracted by the Council, and would have no immediate practical consequence but that of increasing the unpopularity of their opponents. The Council rejected such Bills and heated by the dispute, advanced far beyond the limits which moderation and foresight would have prescribed. The extent to which this conflict was carried, may be illustrated by the fact, that in about 10 Years the Council of Upper Canada defeated very nearly 400 Bills sent up to them by the Assembly. The necessity of some fundamental change in such a system as this would scarcely seem to demand any formal proof. If such proof were wanting it might be found in the fact that the settled state of Public opinion in each

of the Provinces demands such a change, and that demand is in truth irresistible. Where however it may be said is the proof that such is the state of Public opinion ? The English Inhabitants of the Lower Canada are so far from demanding an Elective Council that they are ready to rise in arms to prevent it, and in the Upper Province there is conclusive proof of the existence of a very large Body of Persons who within the last 4 years have assured the King of their perfect contentement with the existing Institutions of their Country.

Now in every attempt to estimate the state of public opinion, it is reasonable to lay out of account that great mass of People,—the large numerical majority of all societies who from various motives take no real interest in public affairs, but are passive spectators, rather than active agents. An Assembly elected by a suffrage almost universal in a Country where great poverty is unknown, cannot but afford a tolerably correct criterion of the views of the more active and intelligent of their Constituents upon the great questions of Local policy. In Upper Canada Public opinion as ascertained by this test is decidedly in favor of the Change.

In Lower Canada the Democratic feelings and principles of the English Inhabitants are such as to have excited the apprehension of the Commissioners and of their Secretary that they would not scruple to throw off their allegiance and to invoke the support of the United States if the Crown should disregard their wishes. But the immediate object

of those wishes being to depress French Antagonists, they are fighting for the moment under Monarchical colours, not from superior attachment to that cause, but the reverse. Once in possession of the power they seek, and no reasonable doubt exists that they would raise the very Standard against which they are now contending.

The policy of the Government or rather the necessity forced upon them by the state of public feeling in both Provinces seems therefore to be that of introducing some change into the Constitution of the Legislative Council by which it may be brought into that degree of harmony with the Assembly which is indispensable to combined action and tranquil Government. This may be accomplished by changes either in the composition of the Assembly, or in that of the Council, or in both.

To alter the composition of the Assembly in the Upper Province is neither possible nor desirable. It is beyond doubt a fair representation of the People at large. But in Lower Canada there is every reason to believe the contrary. In the Upper Province therefore the Constitution of the Council only should undergo a change. In the Lower each House should be to a certain extent remodelled simultaneously. By no other method could the different branches of the respective Legislatures be brought into concert and enabled to act together.

Then arises the question upon what principle the proposed changes should be made. The Assem-

bly have hitherto shunk from advancing beyond the general statement that the Council must be Elective.

But M. Morin, their Agent before the Committee of 1834, explained their views on this matter. He declared that the Councillors should be chosen by the same Constituents as the House of Assembly, and that there was no necessity for any qualification at all, altho' the House was willing, in deference to European prejudices, to allow that no person should be eligible who had not an Estate in Land of at least £300 per annum.

Now it is scarcely necessary to show that this project is at the least as crude and as ill digested as that which it would supersede. It proposes in effect that there should be two Houses of Assembly, differing only in this,—that one of them would have the exclusive power of the purse. From such an arrangement nothing could result but that the Council would become contemptible and noxious to the highest degree. All men of weight and ability with influence enough to be chosen at all, would be Candidates for Seats in the Assembly. Places in the Council would be obtained and sought only by a subordinate and inferior order of persons. The Council must either submit to act a secondary part, and to subscribe to every resolution of the other House, or they must enter into a race of popularity with it. Each Body would vie with the other in the extravagance of their Biddings for popular applause. Each would vindicate it's claim to favor

by hostility against the only opponent to be found, that is the remote British Government, or the Governor himself. The ceaseless collision between the Executive and Legislative authorities could issue in nothing but the speedy establishment of a Republic,—first in substance, and then in name.

Is it then possible to find some safe middle point between the present system and this extreme remedy ? That question will be most conveniently answered by a quotation from the paper to which reference has been already made.

“ It seems to be necessary in the first place to
“ enable the two Houses of the Provincial Parliament to work together without clashing : and in
“ the next to discover some safe and legitimate
“ mode of gratifying the ambition of those who
“ have the leading influence in the Assembly. With
“ respect to the Legislative Council, the objects
“ to be sought in any alteration of it's composition
“ should be, first to give it a greater hold upon
“ public opinion, so as to render it's support, when
“ given to the Crown, of more real value than it
“ now is :—Second.—To make it upon the whole
“ sympathize with the majority of the Assembly ;
“ since, unless there is a general accordance of views
“ between the two Branches of the Legislature it
“ is impossible that the important Office entrusted
“ to them should be satisfactorily performed. Third,
“ To provide however that the council, while in the
“ main agreeing with the majority of the Assembly,
“ should principally represent the views of the

“most moderate Members of that Majority, and
“should contain within itself so large a proportion
“of persons of opposite sentiments, that the refusal of even a very few of the prevailing party to
“concur in any measure proposed to it should
“render it impossible for that measure to pass. It
“is only by a Body answering this description
“that a really effectual control can be preserved over
“the representative branch of the Legislature :
“if the Council should be directly opposed to the
“Assembly, there must be a collision, which could
“only end in the overthrow of the weaker authority ;
“if it were a mere echo of the Lower House, the
“object of the Institution would not be attained ;
“but if it could be made generally to agree with
“the more popular Body, while yet it had a character of greater Headiness and moderation it might
“exercise most beneficially a check, which from
“being only occasionally called into operation would,
“when really wanted, be the more powerful.

“A plan for the creation of a Body of this sort
“is submitted in a separate paper, but it is of course
“proposed not for adoption without much further
“enquiry, but as being calculated to enable the
“Governor, or the Commissioners in the Colony,
“to ascertain how such a scheme would probably
“be received.

“To an alteration of the composition of the Legislative Council founded upon these principles there
“would seem to be no valid objection.”

Supposing the question respecting the changes

in the Legislative Council to be thus adjusted ;— it would next remain to consider whether a simultaneous change in the constituency of the Assembly of Lower Canada must not accompany it. Perhaps it may not unreasonably be expected that by thus yielding something to the demands of the English Inhabitants, and by giving to them greater authority in the Local Legislature, their opposition to the projected change in the Legislative Council might be neutralized or greatly modified, and that by thus balancing the two parties against each other, upon a principle perfectly just in itself, the Government of both might become comparatively easy. No other solution of the problem of reconciling each to the projected innovation could probably be devised.

It remains to enquire in what manner the question respecting the Executive Councils is to be met. Upon that subject the following remarks are extracted from the paper which has been already repeatedly quoted :

“ With respect to the Executive Council, without
“ much fuller information it is impossible to say
“ to what extent concession ought to be made ;
“ but in Lower Canada at least this is a demand
“ much more recently put forward, and to which
“ much less importance seems to be attached than
“ to the change in the character of the Legislative
“ Council ; and it would probably be sufficient to
“ render the Members of this body liable to im-
“ peachment for misconduct before the Legislative

"Council ; while perhaps it might also be advisable
"to adopt Sir C. Grey's suggestion of increasing
"considerably the number of person belonging to it,
"giving at the same time to the Governor the discretionary power of summoning to it's Meetings
"only those individuals whose advice he should
"according to the circumstances of each occasion
"consider likely to be of service to him. With this
"change it would probably at the same time be
"necessary to give to some of the Leaders of the
"Popular Party Offices in the Public Service. Sir
"G. Gipps has justly remarked that the use of the
"patronage of the Government as a means of influencing those who have most in the Assembly has
"been too much neglected.

"Having thus sketched the concessions which
"might, it is conceived, with propriety be made,
"it remains to state the grounds upon which they
"are recommended, and the mode in which it is intended that they should be carried into effect, which
"will involve a general description of the line of
"policy considered to be best adapted to the present
"critical position of this important Colony. These
"concessions are recommended, because as has
"already been observed there is an absolute necessity of restoring harmony between the Legislative
"and Executive Government, and because looking
"to the history of the last few years there seems
"not the slightest room for hoping that less would
"be accepted, either by the existing Assembly,
"or by any other by which it might be succeeded."

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There are many questions as to the mode of effecting any resolutions which may be taken, which however important in themselves may yet be conveniently postponed for the present. The Enquiries to which the preceding remarks may serve to call the attention of His Majesty's Government are the following :

First.—Is it fit that application should be made to Parliament for the repeal or suspension of the Statute 1st and 2nd Wm IV Ch : 23.

Second.—Is fit that application should be made to Parliament for an advance of money to defray the existing arrears of the Public Officers in Lower Canada.

Third.—Is it fit that the funds required for that purpose should be raised by the Sale or Mortgage of the Crown Lands of the Province.

Fourth.—Is it necessary or desirable that Funds should be raised at all for the immediate payment of those Officers.

Fifth.—Is it fit that a change should be made in the Constitution of the Legislative Councils in the British North American Provinces or of any of them.

Sixth.—If so, ought that change to be effected upon the general principles already mentioned, or upon any other principles.

Seventh.—Ought any change to be made in the Constituency of the Assembly of Lower Canada,

having for it's object to redress the inequality which at present exists in favor of the French inhabitants.

Eight.—Ought any change to be effected in the Constitution of the Executive Councils in British North America ; and if so, should it be made upon the principles suggested in the preceding Minute.

Colonial Department

30th April 1836.

