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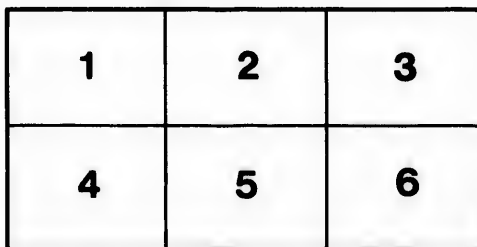
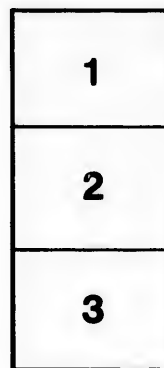
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MEMOIRS

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OF

[CHRISTIE, Robert]

THE ADMINISTRATION OF THE GOVERNMENT

[1788-1856]

OF

not - Cursey

LOWER-CANADA,

BY

SIR GORDON DRUMMOND,

SIR JOHN COAPE SHERBROOKE,

THE LATE

DUKE OF RICHMOND,

JAMES MONK, Esquire,

AND

SIR PEREGRINE MAITLAND;

CONTINUED

From the 3d April, 1815, until the 18th June, 1820.

Quebec:

PRINTED AT THE NEW PRINTING-OFFICE.

1820.

FOR REFERENCE
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MEMOIRS

OF THE

LIFE

OF

GEORGE WASHINGTON

BY

WALTER D. DUNN

OF THE

ARMY

AND

NAVY

OF

THE UNITED STATES

1850

1917

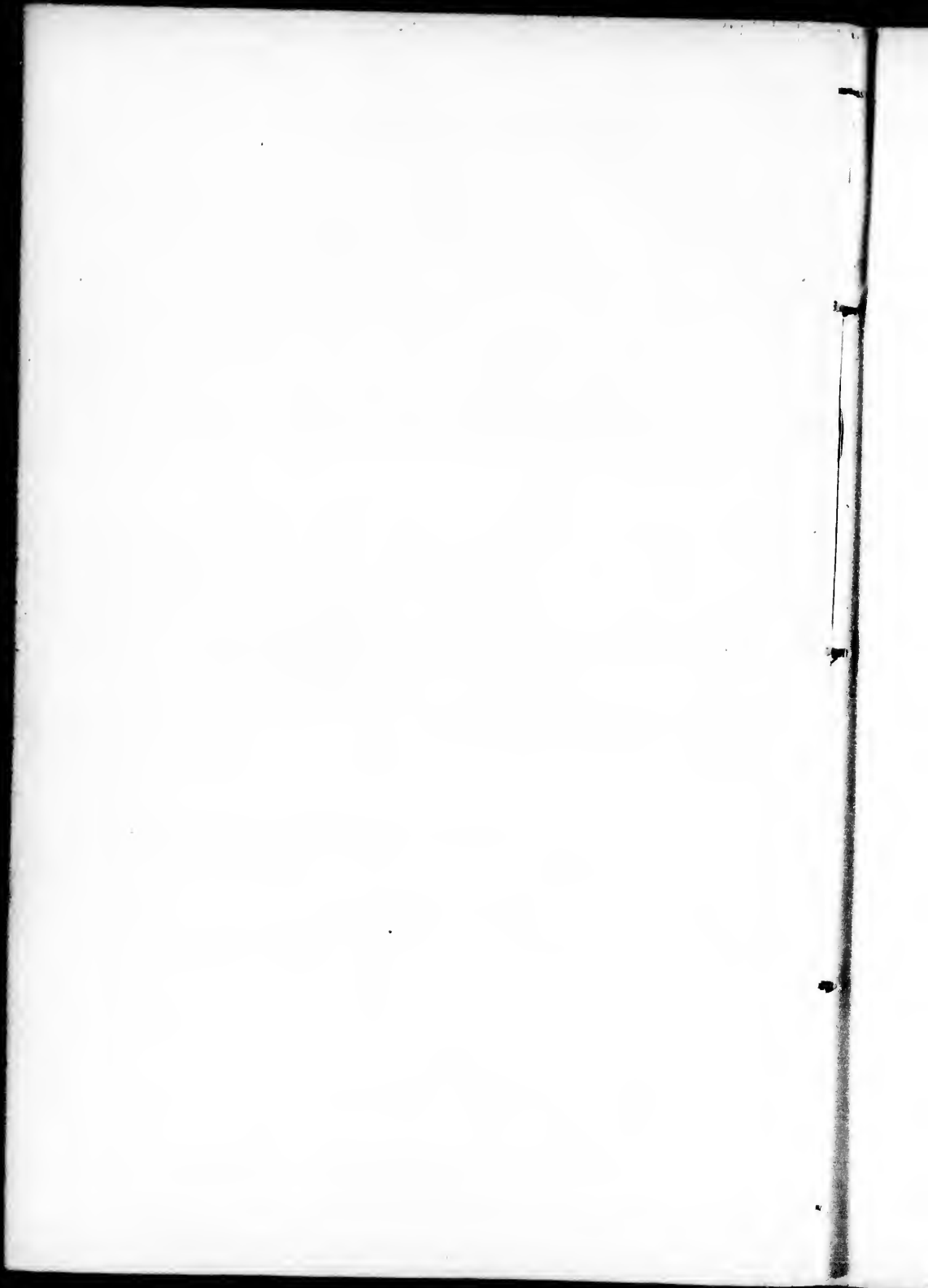
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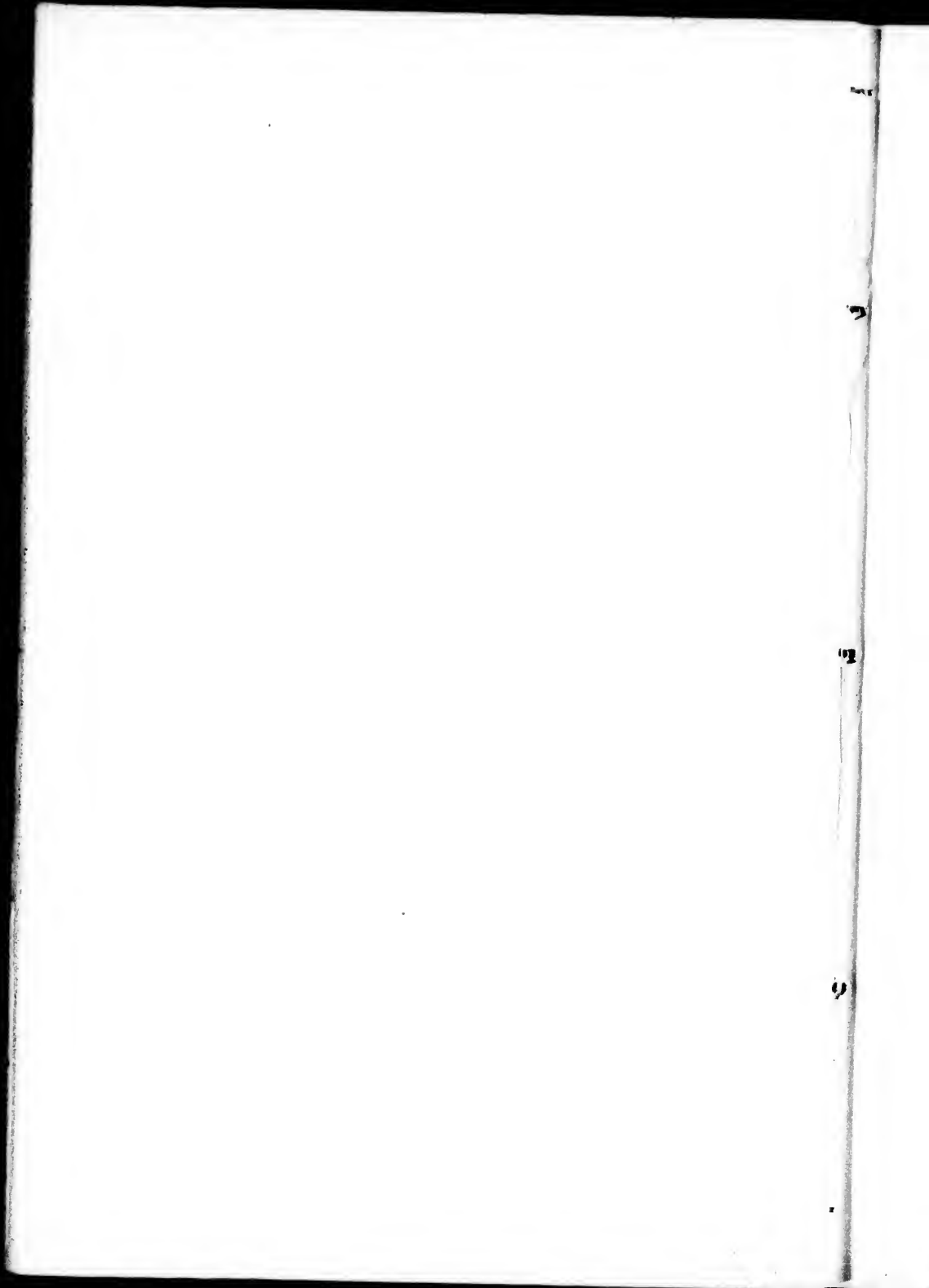
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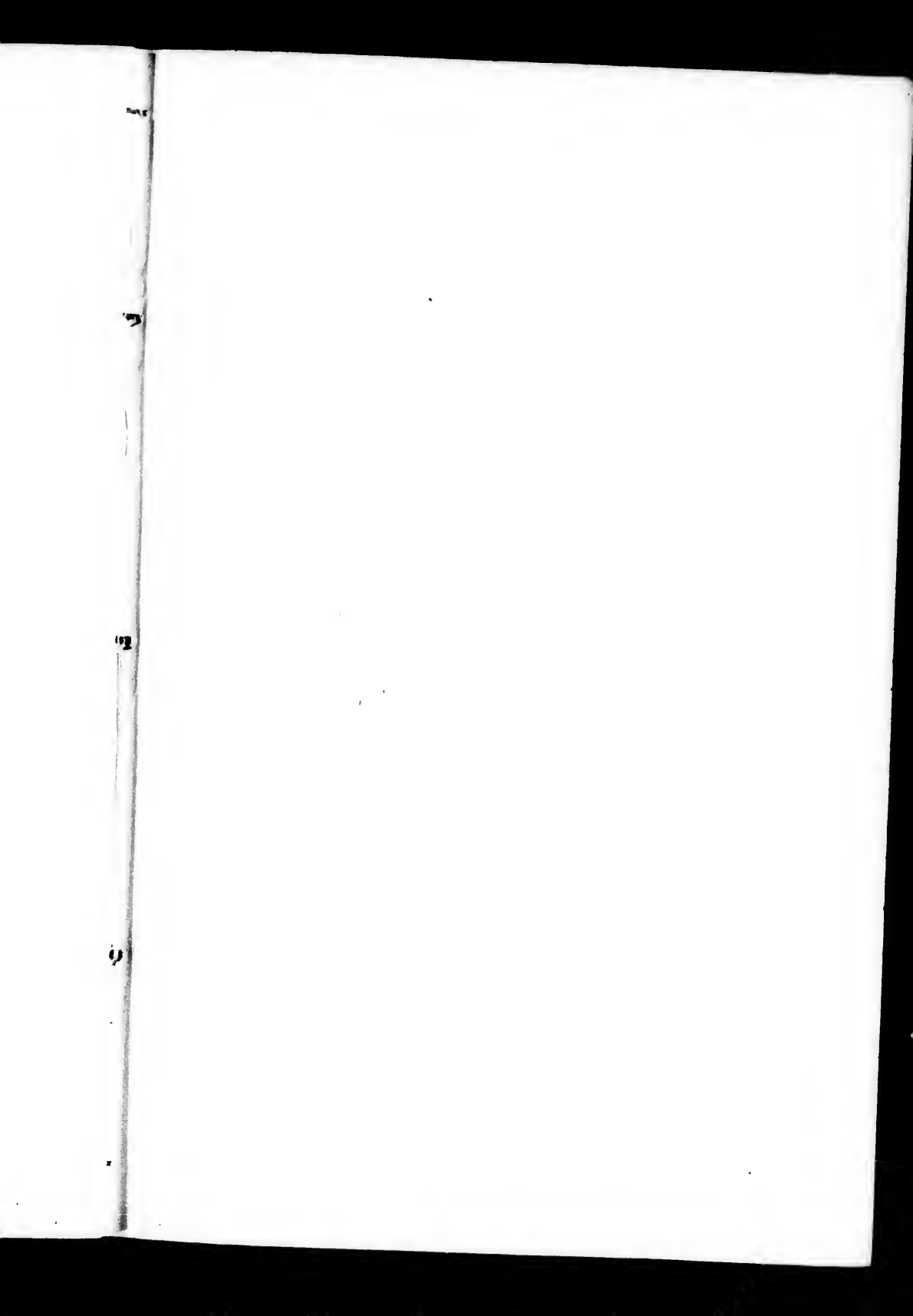
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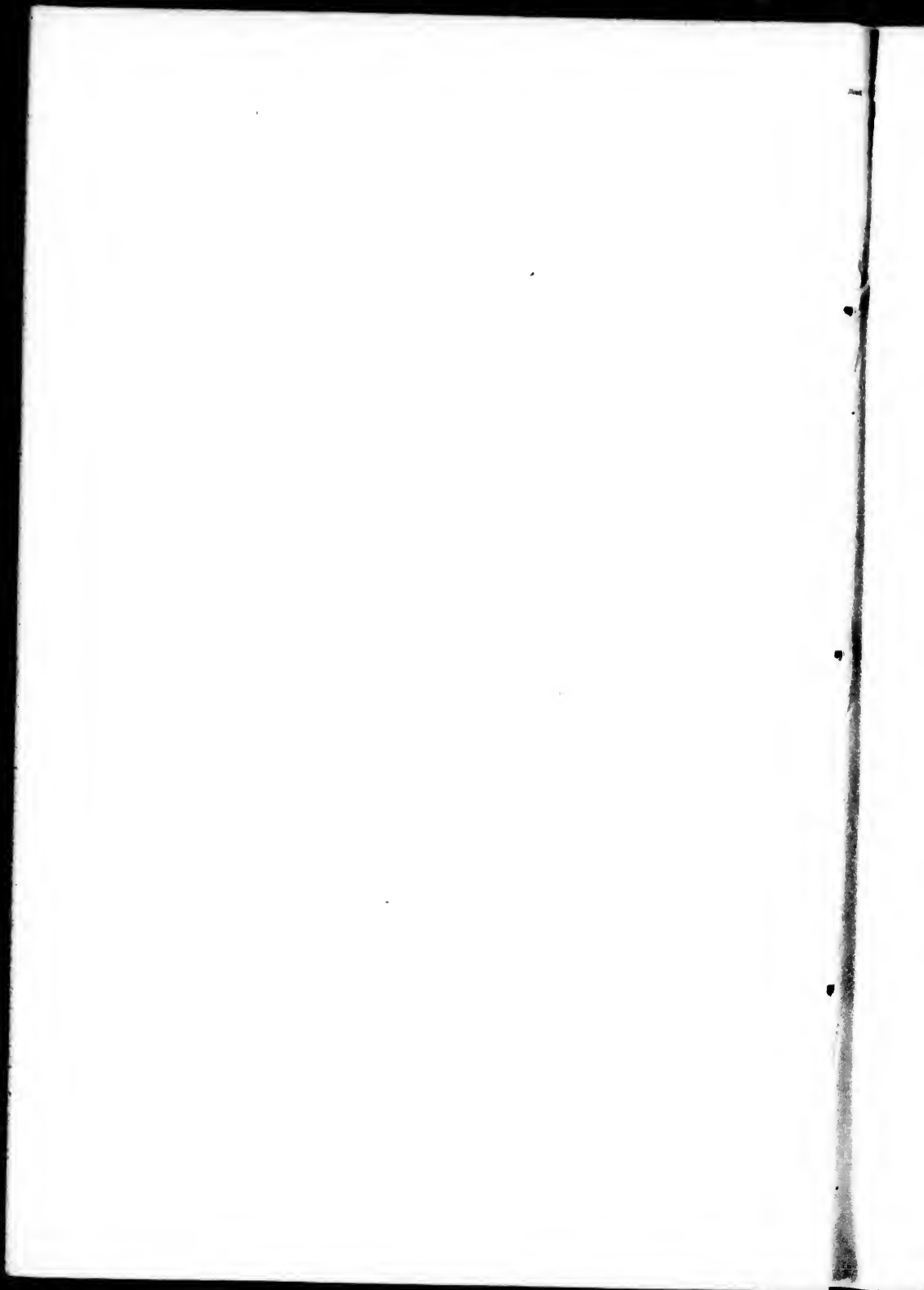
PLATE 1

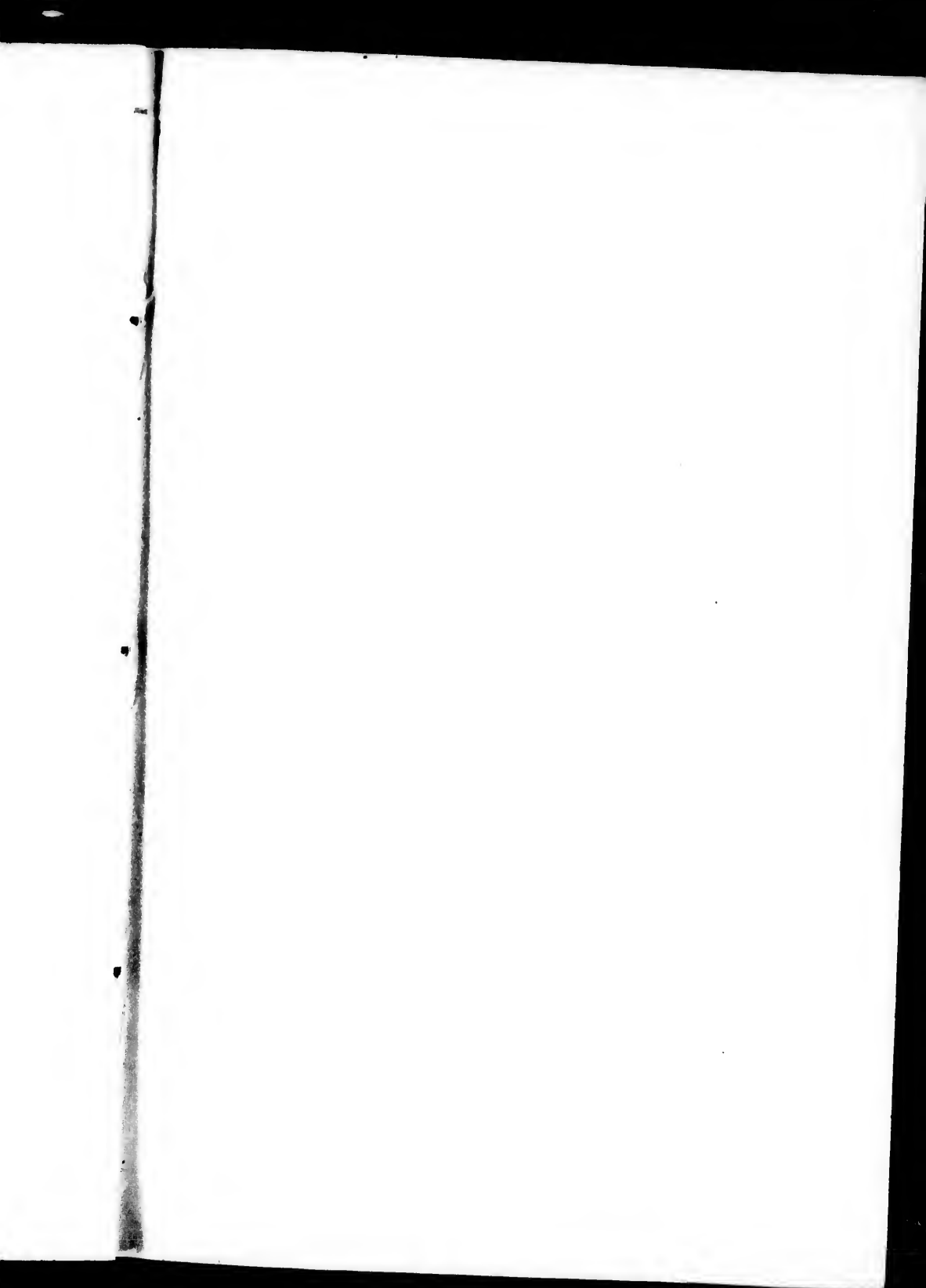


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NOTICE.

THE following sheets, containing a relation of the principal occurrences through five successive administrations of the government of Lower-Canada, are intended as the sequel to a small publication, in 1818, printed in this city, of the administrations of SIR JAMES HENRY CRAIG and SIR GEORGE PREVOST, comprehending the Military and Naval operations in the Canadas, during the late war with the United States of America.

The Author, as on the former publication, again solicits the indulgence of the reader for the omissions and inaccuracies that may be observed in these pages, which he submits to the public in the humble hope that they may not be found uninteresting.

R. C.

Quebec, 10th December, 1820.

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ADMINISTRATION
OF
SIR GORDON DRUMMOND.

CHAPTER IX.

LIEUTENANT-GENERAL SIR GORDON DRUMMOND had served in the Canadas during the administration of Sir James Henry Craig, and from his intercourse with those who were thought to have been in the confidence of that Governor, apprehensions were entertained that he might have imbibed the prejudices of his reign.

CHAP.
IX.
1815.

The only occurrence, however, of any moment, to which the attention of the reader may be turned in the course of this short administration, is the result of the impeachments preferred by the House of Assembly against the Chief Justices. The articles of complaint had been transmitted to England by Sir George Prevost. The misunderstanding between the Legislative Council and Assembly, which sprung from these measures, as already noticed, deprived the latter of the means of deputing an agent to prosecute their complaints in England.

The Legislative Council denied the right of the Assembly to impeach, unless with their concurrence, * and, although this doctrine could not be constitutionally maintained, yet, as the colonial laws were silent on the subject, it was apprehended that sufficient influence might be exerted

* See Appendix, letter E.

CHAP.
IX.

1815.

ed at home, to discountenance this new pretension of the Assembly, which if acceded to, would establish a serious, though salutary, restraint upon the conduct of public men, and few gentlemen of the former body, at the period to which we allude, could be considered as personally disinterested in this respect.

The inability of the Assembly, from this circumstance, to urge their pretensions by means of an agent, gave cause to expect that in the absence of a person properly authorized for that purpose, the impeachments would be overlooked as a concern of little importance. As, however, one of the gentlemen implicated had proceeded to England for the purpose of repelling the accusations brought against him, there was some prospect that the government at home would, were it only in justice to these gentlemen, admit the principle, in order to enable them, after a full and impartial discussion, to justify their conduct.

The decision of this preliminary question, on which a difference subsisted between the two branches of the colonial Legislature, seemed indispensable, before any inquiry could properly be instituted, as well from the novelty of the question itself, as to enable the Assembly to appoint an agent; a measure, from which, the Legislative Council after the admission of such a principle on the part of the British Government, could not plausibly withhold its consent.

Impeachments of the Chief Justices dismissed.

It was not until after the lapse of a twelve month from the transmission of the impeachments to England, and soon after the recall and arrival of Sir George Prevost in Britain, that any serious attention appears to have been bestowed upon them by the Government. On the 29th June, 1815, a report from a committee of the Lords of His Majesty's most honourable Privy Council, dated the 24th of the same month, pursuant to a reference concerning the impeachments, was read and confirmed in Council by His Royal Highness the Prince Regent. Those charges against the Chief Justices, which related to the Rules of Practice in their respective courts, were alone taken into consideration; and it was by an order in Council, declared that these rules were made under authority of the Legislative ordinances and laws of the Province, and consequently that neither of the Chief Justices, nor the courts in which they respectively presided,

presided, had exceeded their jurisdiction, nor been guilty of any assumption of Legislative power.

CHAP.
IX.

1815.

The charges against the Chief Justice of the Province, which related to advice alleged to have been given to Sir James Henry Craig, were altogether excluded from consideration, inasmuch as an enquiry on that subject could not be instituted without an admission of the principle that a colonial governor, at his own discretion, might divest himself of all responsibility on points of political government.

The dismissal of the complaints was published at Quebec, late in November, by the circulation of a printed pamphlet, containing a copy of the order in Council, with a partial correspondence between Lords Bathurst and Chetwynd, and the Chief Justice of Lower-Canada, then in London.*

This sudden and extraordinary termination of an affair in which the Province had taken a lively interest, created a general sensation, and it was surmised that the Assembly would not consider any acquittal of the Chief Justices as satisfactory, until heard in support of the complaints. Others contended that the decision of the Prince Regent must be taken by the Assembly as definitive, and that to call it in question would amount to a high contempt of the Imperial Government, and royal authority.

The Legislature met on the 26th January. On the 2d February, the Administrator in Chief sent a message by his Civil Secretary, to the House of Assembly, which was read at the bar, acquainting that body with the dismissal of their complaints against the Chief Justices, and the opinion of the Prince Regent relative to the conduct of the Assembly in impeaching these persons, little flattering to the members, who had, in the preceding Parliament, supported the impeachments.†

1816.

The Assembly, indignant at the manner in which their complaints had been disposed of, immediately after the messenger had retired from their bar, ordered a call of the House for the 14th of the same month. The message was at the same time referred to a committee of the whole, and it

* See Appendix, F.

† See Appendix, G.

CHAP.
IX.


1816.

it was unanimously resolved that the House would, on the fourteenth, form itself into a general committee to consider of the matter.

The subject was on the fourteenth referred to the consideration of a special committee of seven members, to whom two others were afterwards added, with directions to report their opinion on the most expedient manner of proceeding on the same. On the twenty-third this committee reported to the house, that having maturely deliberated upon the order of reference, they were of opinion that the matters disclosed in his Excellency's message would render necessary an humble representation and petition to his Royal Highness the Prince Regent, and that the great importance of the matters involved in the said message, made it advisable that the wisdom of the house should be consulted, and its sense taken preparatory to such representation and petition.

Resolutions
of the House of
Assembly on
the dismissal of
the impeach-
ments.

On the twenty-fourth, the Assembly accordingly came to some resolutions on the subject. By these were expressed, a sense of the public duty under which the House had acted in impeaching the Chief Justices; its opinion of the right of the commons of Lower-Canada to be heard, and of having an opportunity of adducing evidence in support of their charges; the causes which had prevented them from maintaining those charges; their desire of having an opportunity so to do; and finally, that an humble representation and petition, on behalf of the commons of Lower Canada, to his Royal Highness the Prince Regent be prepared, appealing to the justice of his Majesty's Government, and praying that an opportunity might be afforded to his Majesty's most dutiful commons of Lower-Canada, to be heard upon, and to maintain their complaints.* A special committee was then appointed, for preparing an humble representation and petition, in conformity with the last of these resolutions.

Whether Sir Gordon Drummond was impelled by his instructions from home, to resort to a dissolution in the event that the Assembly should resume this subject, or whether he spontaneously exercised the prerogative on the occasion, we cannot with certainty assert. On the twenty-

sixth,

* See Appendix, H.

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CHAP.

IX.

1816.

sixth, before any of the measures which had been resolved were brought to maturity, his arrival at the Council chamber was announced by a discharge of artillery. The Assembly being summoned to attend, he, in a very short speech, expressed his regret that they should have allowed any consideration to overbear the respect due to the decision of his Royal Highness the Prince Regent; and announced his determination to prorogue the present Parliament, and to recur to the sense of the people by an immediate dissolution.

Assembly dissolved.

Several subjects of the utmost importance were before the Assembly in this Session, but no more than a single Act* received the royal sanction. The expediency of having an agent in England to attend to the interests of the Province, whenever it might be requisite, was again considered; but the dissolution prevented a perseverance in the measure. The Assembly, in pursuance of a resolution made in the last Session, passed a bill "to appropriate a sum of money therein mentioned, to the purchase of a service of plate to be presented to Sir George Prevost, late Governor in Chief of the Province, as a mark of respect for his character, and of gratitude for the services which he had rendered to the Province."† This bill being sent up for the concurrence of the Legislative Council, was rejected by that body.

The elections for the new Assembly took place in the month of March, and few alterations in the representation were made throughout the Province.

In the meantime, the Administrator in Chief received notification of the appointment of Sir John Coape Sherbrooke to the chief command in British North America; and on the twenty-first day of May he sailed for England, having on the day of his departure received a valedictory address from the citizens of Quebec. The temporary administration of the government devolved upon Major-General Wilson, until the arrival of Sir John Coape Sherbrooke.

Sir Gordon Drummond retires from the Government.

The merit of Sir Gordon Drummond, in defending Upper-Canada against a greatly superior force of the enemy, stands already recorded, and justly entitles him to an exalted

* An Act to regulate the trial of controverted elections, &c.

† The sum appropriated by the bill was £5000.

CHAP.
IX.

1816.

alted station among the soldiers of his country. The shortness and untoward circumstances which accidentally intervened during his reign in Lower-Canada, place his civil administration in a less favourable light than might reasonably have been expected, under less perplexing occurrences, from a person of his acknowledged worth. His popularity somewhat abated after he had dissolved the Assembly, and this indeed, is the only exception of any note, started against his administration. On examining the pretensions of the Assembly, they will be found compatible with the freedom of the constitution, and one can scarcely avoid thinking that a compromise might have been made without recurring to a dissolution. On the merits of the impeachments themselves we hazard nothing, but as they professed to be the grievances and complaints of an entire Province acting by its representatives, it seems but reasonable that a hearing should have been granted, and the subject maturely discussed in the presence of all the parties concerned, or of their accredited agents. The Legislative Council having denied the right of the Assembly to impeach, had therefore refused its assent to a money appropriation for the mission of an agent to England on behalf of the commons of Lower-Canada. The government at home could not have been unacquainted with the controversy which existed on this subject between these two branches of the colonial Legislature, and might, therefore, easily have accounted for the absence of a colonial agent to urge the pretensions of the Assembly. Had a preliminary decision on the right asserted by that body, of impeaching persons in office, suspected of high crimes and misdemeanors, been pronounced, and a subsequent hearing of all parties been granted, after a reasonable delay and notification to that effect, whatever might have been the result, the government by this course of procedure would have afforded a valuable instance of its disposition to attend to the real or imaginary grievances of the colony, which, in such a case, could not be otherwise than satisfied with the justice of the former.

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ADMINISTRATION OF
SIR JOHN COAPE SHERBROOKE.

CHAPTER X.

SIR JOHN COAPE SHERBROOKE arrived at Quebec, on the 12th July, 1816, from Halifax, Nova-Scotia, where his administration had given universal satisfaction. This officer, from his residence in that colony, must have been well acquainted with the public affairs in Canada, an advantage of which he judiciously availed himself by adopting a line of policy suited to their complexion. Easy of access to all men, frank towards those who came to him on public business, diligent and earnest in the accomplishment of those purposes which he considered as essential to the welfare of the Province, he won the confidence of the people, and preserved it throughout his administration.

CHAP.
X.

1816.

The first act of his administration of any import, was that of a benevolent mind. Owing to the failure of the harvest in the lower parts of the district of Quebec, by early frosts, several of the parishes were threatened with famine. The Governor, upon his own responsibility, threw open the king's stores, and advanced a very considerable sum of money for the purchase of such supplies as were not in store. Provisions were forwarded before the commencement of winter to the distressed parishes, which by this seasonable relief, were rescued from famine.

The Legislature met earlier in the season than usual, and the Governor called their immediate attention to this subject, recommending such further measures as the nature of the evil complained of might require.

*Legislature
meets on the
15th January,
1817.*

Engaged in this and other concerns of moment, the Assembly postponed the consideration of the impeachments until towards the close of the Session. A reluctance to enter upon this subject was indeed visible from the commencement, probably from a persuasion prevalent among the members, that the peremptory nature of the Governor's instructions were such, as to leave him no discretionary power in case the Assembly should resume the question.

A Judge of the court of king's bench for the district of Montreal, was impeached in this Session by Mr. Cuvillier,

*Mr. Justice
Foucher im-
peached.*

CHAP.
X.

1817.

And is sus-
pended by the
Governor.

for divers alleged high crimes and misdemeanors, committed in his official capacity. The Assembly, after instituting an inquiry into the grounds upon which the charges preferred against him were laid, adopted certain resolutions, and drew up an address to the Prince Regent, which, together with the articles of complaint, they requested the Governor to transmit to his Royal Highness. The House also requested the Governor to suspend the accused from his functions while the charges were pending against him. His Excellency, on receiving the address of the Assembly, informed them that he would not fail to transmit their address, with the articles of complaint, and the documents accompanying the same, to the Prince Regent. He also acquainted them that having previously perused the evidence adduced in the course of the investigation, he had already communicated to the Judge in question, his desire that he should abstain from the exercise of his judicial functions, until the determination of the Prince Regent, with respect to any further proceedings on the accusations, should be made known. By this prudent anticipation of the desires of the Assembly, the Governor gratified that body, without incroaching upon the pretensions of the Legislative Council, who still, as on a former occasion, denied the right of the Assembly to impeach* without their concurrence.

Proceedings
of the Legisla-
tive Council.

The proceedings of the Assembly being communicated by message to the Legislative Council, this body came to certain resolutions, and framed an address in like manner to the Regent, stating that they had in no wise participated in the charges preferred against the Judge, and remonstrated against the right of the Assembly to impeach, which they observed would thenceforth, if admitted, place every public officer at the mercy of the Assembly, and thereby disqualify them from a faithful and independent discharge of their official duty; they therefore besought his Royal Highness not to inflict any punishment on the accused until the articles of complaint should have been submitted to, and met with their concurrence, or, until such articles of complaint, in the event that their concurrence should not be deemed necessary, should be heard and determined by them under such commission as his Royal Highness should see fit to issue for that purpose.

These

* See Appendix, I.

These proceedings were communicated by message to the House of Assembly, where, in reply to them, it was resolved, "That the claims of the Legislative Council touching the complaints brought by the Assembly; were not founded on the constitutional law, or any analogy thereto; that they tended to prevent offenders out of the reach of the ordinary tribunals of the country from being brought to justice, and to maintain, perpetuate, and encourage an arbitrary, illegal, tyrannical, and oppressive power over the people of the Province."

A petition was presented to the Assembly from the orphan children of the late François Corbeil, who had died in consequence of his imprisonment at Montreal, during the administration of Sir James Henry Craig, principally complaining against the Chief Justice of the district of Montreal, in issuing a warrant for the imprisonment of their deceased father, and praying the Assembly to adopt such measures thereupon as might appear proper.

Another petition concerning the conduct of the same gentleman, towards a member of the Assembly, (Mr. Sherwood) was also presented. Some time after the appearance in print of the letters, and order in Council already mentioned, relative to the dismissal of the complaints against the Chief Justices, a printed travesty, turning these into burlesque, was circulated. A groundless suspicion that Mr. S. was the author, obtained some credit, and that gentleman, who, by his sturdy opposition to certain measures in the Legislature, where he had recently obtained a seat, becoming obnoxious to a party, was singled out for criminal prosecution for a libel upon the King's Government. The Chief Justice in Montreal had, during the time that the court of King's Bench for criminal pleas ought to have sat in that City, absented himself while attending the Legislative Council, when the Assembly in the preceding Session were about to resume the consideration of the complaints in which he was personally concerned. As the court of King's Bench could not legally be held without his presence, the term was lost. To obviate this inconvenience a commission of oyer and terminer for the district of Montreal was issued after the dissolution of the Parliament. The Chief Justice presided in that court where a bill of indictment for a libel upon his Majesty's Government was found

These

CHAP.
X.

1817.

Proceedings
in the Assembly,
relating to
the Chief Justice
of Montreal.

found against Mr. Sherwood. It was with a view of exposing and seeking redress for the proceedings connected with this prosecution, that the present petition was laid before the house. The conduct of the Chief Justice, in absenting himself from his official duties, and thereby causing the laws of the land to be suspended and dispensed with, contrary to the bill of rights, were complained of. The grand jury, who had found this bill of indictment, instead of being summoned from the body of the district, had, as it was asserted, been packed from the City of Montreal. They were represented as partisans and persons inclined to second the measures of the Chief Justice, whose conduct in the present instance, while presiding in his court, was placed in an unfavourable light. The petition was referred to a special committee of five members, who immediately instituted an inquiry into the subject. The Chief Justice, in the mean time, hearing of this new complaint against him before the Assembly, wrote a letter concerning it to the Governor in Chief, which his Excellency transmitted to the Speaker, by whom it was submitted to House.* The committee made some progress in the inquiry, but from the unusual pressure of business in this Session, it was found impossible to bring it to a close, and leave was therefore given to continue the subject until the ensuing Session.

Soon after the Governor's arrival at Quebec, a bill, granting a salary to the Speaker of the Assembly, passed on the 25th March, 1815, received, after upwards of a year's delay, the Royal sanction. By this act, a salary for the Speaker of the then existing Assembly only, which expired with that session, was provided.

On the eleventh of March, the Assembly presented addresses to the Governor, requesting that his Excellency would allow their Speaker, during that Parliament, such adequate salary as might be thought suitable to the dignity of his office, and that he would also be pleased to confer some signal mark of the Royal favour on the widow of Mr. Panet, the late Speaker, in testimony of his services as such, during twenty years and upwards, without any recompense or remuneration. To the former of these addresses the Governor made answer, that "the Legislative Council having, by their addresses of the 4th of March, 1815,

* For this document see Appendix, K.

1815, stated that that house was impressed with the expediency of remunerating their Speaker, also by an annual salary, for the arduous and important duties attached to his high office, and having prayed that such measures might be adopted for that purpose as should seem meet, he should readily comply with the wishes of the Assembly, and make an adequate and proper remuneration for the services and duties of the Speaker of that house from the commencement of that Parliament to the end thereof, upon being enabled to make a similar provision for the Speaker of the Legislative Council for the same period." In answer to the latter, he acquainted them, that in compliance with their request, and in consideration of the sense he entertained for the long service and great merit of the late Speaker, he had, in his Majesty's behalf, conferred an annuity on his widow of three hundred pounds currency during her life.

The Assembly could not reasonably withhold from the Speaker of the Upper House, the advantages which they intended to confer on their own. They, therefore, resolved to make good the sums which the Governor might cause to be expended for the payment of the salary of the Speaker of the Legislative Council. This resolution being formally communicated to the Governor, he sent a message to the Assembly to inform them that, in consequence of their addresses, he had conferred, on the Speakers of both Houses, an annual salary of one thousand pounds from the commencement until the conclusion of that Parliament.

Salaries to the Speakers of the Legislative Council & Assembly.

Fourteen thousand two hundred and sixteen pounds were granted to make good the advances which the Governor had made for the relief of the parishes in distress from the failure of the late harvest. The further sum of fifteen thousand five hundred pounds were advanced for the same purpose. Twenty thousand pounds were granted for the purchase of seed wheat, and other grain, and potatoes, for the more indigent husbandmen, on their giving security to repay the amount advanced. Fifty-five thousand pounds were appropriated for the improvement of the internal communications of the province, and two thousand two hundred and fifty pounds were granted for the promotion of vaccine inoculation. Various annual acts which had expired, owing to the late dissolution of the Provincial Parliament, were now renewed.

Grants of money by the Assembly for divers purposes.

CHAP.

X.

1817.

Impeachments
of the Chief
Justices again
considered.

After these affairs had been despatched, Mr. James Stuart again brought forward the consideration of adopting further measures with respect to the impeachments. He maintained the right of the Commons of Lower-Canada to petition the Regent on the decision which had been given, and respectfully to remonstrate upon the wrongs which the Province might ultimately experience in consequence of it. Though his reasoning on the subject was sound and irresistible, the members, at once, fatigued with the labours of the session, and disgusted with the late dissolution, and the hourly reports that a similar event would ensue, should any resolution, tending to revive the question, be adopted, were desirous of leaving it at rest until the ensuing Session; in the expectation that some measures would in the mean time be adopted by the Government, to quiet the public uneasiness on this subject. The consideration of it was, therefore, postponed by a great majority of votes until the following Session. It was not, however, resumed as proposed in that Session, and there is cause to suspect that the present course was purposely adopted as the easiest mode of totally relinquishing the subject. On the twenty-second of March, the Provincial Parliament was prorogued.

The liberal supplies which the Assembly had laid at the disposal of the Governor, enabled him to direct his attention with effect to the improvement of the Colony, and some new roads were opened through the unsettled parts of Lower-Canada, the most susceptible of immediate establishments.

1818.

Meeting of the
Legislature 7th
January, 1818.

From the prorogation to the ensuing Session no incident of any moment occurred. The Governor, in opening the Session, recommended to the consideration of the Legislature, the propriety of holding out some inducement to a few good farmers and labourers to settle in the Province, for the purpose of introducing, by their example, a more improved system of agriculture. He also informed the House of Assembly, that he had received the commands of his Royal Highness the Prince Regent to call upon the Legislature to vote the sums necessary for the ordinary annual expenditure of the Province; that in pursuance of these directions from his Majesty's Government, he would order to be laid before them an estimate of the sums which would be necessary to defray the expense of the civil government of the Province, for the year 1818, and that he anticipated

a ready execution of the offer, which they (the Assembly) had made on a former occasion, to defray the expenses of his Majesty's Provincial Government, with a liberality that did them honour.

CHAP.
X.

1818.

This information was received by the public with much gratification, as it gave to the Assembly, that weight in the colonial constitution which properly belonged to it, and the seeking whereof had, in 1810, created so much heat and animadversion.

Before the public accounts and estimates were sent down to the Assembly, the Governor was attacked with a paralysis, which deprived him of the use of his left side. This untoward circumstance opened a glimmering of hope to those whose interests being likely to be affected, were therefore averse to the measure which the British Government had recently adopted, in charging the Province with the payment of its own civil list. If by any means a prorogation of the Session could have been brought about, before the estimates were submitted to the Assembly, and that body, by making an adequate appropriation for the purpose, were possessed of the civil list, there might still remain a possibility that the Government at home, upon a strong remonstrance, would be induced to revoke the measure now proposed to the Assembly. The Governor's life was therefore whispered to be in imminent danger, or at least that his illness was such, as to render him incapable of attending to public business, and that a prorogation must necessarily ensue. An inquiry even is said to have been privately instituted in a certain quarter for the purpose of establishing his inability to continue in the exercise of the Government of the Province, and to adopt measures accordingly.

The Governor's illness.

After two or three days of adjournments, by the Assembly from a sense of deference towards the Governor, it was ascertained that his present infirmity had not impaired his faculties, and they therefore proceeded to business as usual.

The estimates for the civil list were sent to the Assembly at an advanced period of the Session, and amounted to the sum of £73,646 8s. 9d. currency of Lower-Canada, for the payment whereof, the funds already by law provided, amounted, at an average for the last three years, to the sum of £33,383, leaving a balance of £40,263 8s. 9d. to be provided

Civil List for
1818.

CHAP.
X.
1818.

provided for. After debates on the subject, during the greater part of seven days, the Assembly came to a resolution that the sum required should be appropriated for the civil list, but owing to the late period of the Session at which the matter had been discussed, the House postponed the further consideration of it, until the next meeting of the Legislature, without passing a bill of appropriation for the present.

Proceedings
in the Legisla-
tive Council
with respect to
the Impeach-
ment of Mr.
Foucher.

The Legislative Council had, at the recommendation of the Governor, been recently augmented in number, by the addition of several new members. This body, notwithstanding its opposition to the pretensions recently assumed by the Lower House, with respect to impeachments, on learning the determination of the Prince Regent concerning the accusation preferred, last Session, against one of the Judges at Montreal, as it seemed to extend their own power, now became advocates for the doctrine. His Royal Highness had decided that in this, and all similar cases of impeachment by the Assembly, the adjudication of the charges preferred against the party accused should be left to the Legislative Council. The acquisition of so important a privilege as that of sitting in judgment on the complaints of the commons of Lower-Canada in cases of impeachment, raised the dignity of the Legislative Council in the same proportion, as the right now admitted to exist in the Assembly, had confirmed the power of this body, and equally balanced these two branches of the colonial Legislature. Although by the instructions which the Governor had received from home, this principle was settled, yet the manner in which the adjudication of the impeachment was to be carried into effect had not been explained. He had, therefore, been under the necessity of recurring to his Majesty's Government for further instructions in this respect. The substance of the information sought for, was to ascertain whether the Legislative Council was to take cognizance of impeachments by the commons, in virtue of a special commission, to be issued for the occasion, or whether it were to exercise that authority as a privilege inherent in the Upper House from the nature of the constitution, and by the analogy it bore with the House of Lords in Great-Britain. The Governor had not thought it expedient to communicate the instructions he had received to the two branches of the Legislature, until it should be in his power to lay before them the full and definitive intention of the King's Government on the subject. A report of the measure

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sure which His Excellency had pursued, on this point having gone abroad, such members of the Upper House as entertained lofty notions of the inherent privileges of that body, showed a disposition to call in question the propriety of the Governor's conduct, and that of his advisers, in a matter which, they maintained, concerned the privileges of the Legislative Council, and, therefore, only to be settled by itself. Others, of more moderate pretensions, denied the doctrine of inherent privileges in the Upper House, to decide upon the complaints of the commons; a right which, they said, far from being inherent, had, in the present instance, manifestly emanated from the crown, from which it was indispensibly requisite that some instrument should be furnished before they could constitutionally and legally proceed on the trial of the accused. In the Lower House an opinion was prevalent, that to enable the Legislative Council to proceed upon the impeachment in question, an act of the Provincial Legislature for that purpose was indispensible. Some warm debates, on a motion in the Upper House for an address to the Governor to request information on what had been done relative to the last impeachment, took place. His Excellency, therefore, to satisfy both Houses of the Legislature, sent a message, informing them of the steps he had thought it expedient to adopt on the subject. This official communication, far from satisfying those who had agitated the question in the Legislative Council, afforded a ground-work upon which subsequent proceedings were intended to be raised; but a regard for the actual state of the governor's health probably connected with other motives not generally understood, induced the movers of the proposed address to relinquish the matter for the present.

Among the concerns which occupied the House of Assembly, was an inquiry, instituted by Mr. Cu villier, into the administration of justice in the Court of Vice Admiralty, which was not brought to a close in this session, owing to the great pressure of business which required immediate despatch.

Court of Admiralty.

The more important acts passed during this session were, an act for opening a navigable canal from Saint John's to Chambly, on the river Richelieu; an act for the encouragement of agriculture; another to authorize the appointment of commissioners for the improvement of the communica-

CHAP.
X.
1818.

tion by water with Upper-Canada; and another to establish watches and night lights in the cities of Quebec and Montreal. A bill incorporating a bank in the City of Montreal was passed by the Lower and Upper Houses, but it was reserved by the Governor for the Royal consideration.

Assembly
prorogued.

On the first of April, the public business being concluded, the Legislative Council and Assembly went up to the Castle of St. Lewis (the governor being still from illness incapable of attending at the Council Chamber with the usual solemnities) where such bills as were ready, received with the exception above-mentioned, the royal sanction, and his Excellency prorogued the Parliament, with acknowledgments for the attention and diligence with which the public business had been despatched.

Retires from
the Govern-
ment.

The Governor had requested leave to retire from the government of the Province on account of his declining state of health, and he was replaced by the Duke of Richmond, whose appointment was known at Quebec early in the summer. This nobleman accordingly, left England for Quebec, where he arrived on the 29th July, in his Majesty's ship *Iphigenia*, on board of which Sir John Coape Sherbrooke embarked for England on the 12th August, having, on the eve of his departure, received the most affectionate farewell addresses from the citizens of Quebec, Montreal, and Three Rivers, as well as from the members of the Legislative and Executive Councils.

In reviewing this administration, few observations occur to us that are not obvious to the reader on a perusal of the preceding pages. That he assumed the government of Lower-Canada when the nicest management was necessary to heal the divisions which recent events were on the point of producing, will be as readily admitted as that the prudence of his measures conciliated those differences which might have involved his administration, from the beginning, in the most unpleasant altercations. Prompted by the best of principles, and superior to the local prejudices which too frequently predominate in colonial politics, he gave a free scope to the Legislature of the province, and imparted to it a new and more liberal character than it had hitherto possessed. Those pretensions, which a few years before had embroiled the Executive with the Assembly, were now gratuitously

gratuitously yielded to the latter, and the constitution of the colony made more progress in the acquisition of solid advantages during this administration, than it had previously gained since its establishment. That trifling errors may have been occasionally committed, is but natural to suppose; but there are none which, upon a proper remonstrance, he would not readily have repaired, and which are not compensated by a multitude of virtuous actions.

CHAP.
X.

1818.

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ADMINISTRATION
OF THE
GOVERNMENT OF LOWER-CANADA,
BY HIS GRACE, THE LATE
DUKE OF RICHMOND, LENNOX AND
AUBIGNY.

CHAPTER XI.

CHAP.
XI.
1818.

NEWS of the appointment of the DUKE OF RICHMOND to the chief command in British North America were received with universal satisfaction in Lower-Canada, the prosperity of which, it was confidently hoped, could not but improve under a person, who had administered with success the important and arduous government of Ireland, whose rank and connections were among the first in Britain, and whose character and influence with the Ministers were supposed to be great. This momentary prospect was scarcely open, when it closed; and, in pursuing these memoirs, we lament that we have little but the obsequies of this illustrious nobleman to record.

To obtain a local knowledge of the Canadas, with a view to their improvement in a military and commercial sense, the Governor left Quebec, towards the first of September, on a tour through the Canadas. The objects which, in the course of this journey, more immediately engaged his intention, were the improvement of the inland navigation of the St. Lawrence, the Chambly, and the Ottawas rivers, by means of the canals which had been previously contemplated for the purpose of surmounting the impediments to the navigation of those waters, from their rapids. Towards
the

Duke of Richmond visits
Upper Canada.

the end of October he visited the Isle aux Noix, the temporary fortifications of which, he determined to alter and improve, in a manner suitable to the importance of that post to the security of Lower-Canada, in the event of war with the United States.

CHAP.
XI.

1818.

The Legislature met at Quebec on the 12th January, when it was prorogued until the 22d of the same month, in consequence of the decease of the Queen. In opening the Session he called the attention of the House of Assembly to the Civil List, which, owing to the illness of the late Governor, during the last session, had not been finally adjusted. The sum advanced for the service of the preceding year, pursuant to a vote of the Assembly for defraying the expence of the Civil List, was, after some debates in the Lower House, sanctioned by a Law. On the 3d March the Governor sent to the Assembly, by message, an estimate of the expence of the Civil List, for the year beginning on the 1st November, 1818, and ending 31st October, 1819, amounting to £81432 6 6, sterling. This was referred to a Special Committee, where it was minutely scrutinised. This Committee, in a long and detailed report, forcibly recommended economy, and, in some instances, total retrenchment of offices, which they considered as unnecessary or as sinecures. The subject which engrossed the attention of the Assembly, in this session, was rather the mode in which the sums to be appropriated for the Civil List should be given, than the amount, in which, without being lavish, there was a disposition to be liberal. On a matter of such importance, by which a precedent was to be established for the guidance of future Legislatures, it behoved the Representatives of the Province to proceed with circumspection. A discussion, therefore, arose, whether the sum required by Government, for the Civil List, should be granted *en bloc*, that is, in one entire round sum for the whole, leaving the apportionment and distribution to the Executive, or by *Items* specifying the particular amount to be given to each officer of the civil government of the colony. A part of the Assembly insisted that the sum required by his Majesty's government to defray the expence of the Civil List, could not be constitutionally accepted unless granted *en bloc* by the Assembly. That to accept of it in that shape would be virtually to relinquish the Royal patronage, and that to vote and appropriate by an act of the Legislature the sum required, *item by item*, was without precedent

1819.
Session of the
Legislature.

Civil List
considered.

CHAP.
 XI.
 1819.

precedent in the Imperial Parliament, and would be an in- trenchment on the prerogative. Another part of the same body contended, with equal determination, that it was the indisputable right of the Commons, in all money appro- priations, to apportion them as they might deem expedient. That although the Civil List of the mother country and the supplies annually voted by Parliament for the various branches of the public service, were not detailed by *items*, yet the right of the Commons to do so, could not be de- nied. That the responsibility of Ministers for the due ap- plication of all public monies, rendered it unnecessary for the Commons, in their grants of money, to enter into minute details, but that in this colony there being no acknowledged responsibility vested in any set of men, the only surety which the Assembly could have for the due application of the public money, was an Act of the Legislature. That this would leave the patronage exclusively with the crown, as formerly, and would only operate as a salutary check on the Executive, which it was but fair that the Assembly should hold, as a pledge of the diligence and integrity of its officers. The examples of the British Colonies were cited, and in fine it was resolved by a strong majority that the sum required to defray the expence of the Civil List should not be otherwise granted than by *items*, such being the sense of the people of the Province. A small party in the Assembly were desirous of compromising the difference by adopting a middle course, in voting the necessary sums by Chapters, that is, by round sums, for the several De- partments of the Government, leaving the distribution of those sums among their respective officers, to the Govern- ment. This proposal, which possibly might have succeeded with judicious management at the outset of the contest, came too late, and from the excitement already created by the debates on the two main questions, was not listen- ed to. A Bill was accordingly digested, appropriating the sum required for the payment of the Civil List by *items*, which passed the House, and was sent up to the Legisla- tive Council. Here it was roughly received as unconsti- tutional in form, an encroachment on the prerogative, and subversive of the authority of the Crown over its own of- ficers, and as such, after very little debate, was almost unanimously rejected, a single member having courage to express himself in favor of the bill, amidst the opprobrium with which it was treated. In this session an act was pass- ed, authorizing a navigable canal, to be made by subscrip- tion,

Bill provid-
 ing for the Ci-
 vil List, passed
 by the Assem-
 bly.

Lachine Ca-
 nal Bill.

tion, from Montreal to Lachine, by which the Rapids in the St. Lawrence, between these two places, would be avoided. The trade between Lower-Canada, and the United States, which had heretofore been regulated by orders of the Governor in Council, was now regulated by a temporary Law enacted for the purpose.

Some alteration was made in the Militia Law, to prevent the appointment of any officer to a battalion, who should not be resident in the county, city, town, borough, parish or township for which he might be appointed, and who should not be an owner, or the son of an owner of real estate therein. The Assembly granted the sum of three thousand pounds for the purpose of laying out lands for reduced officers and men of the Embodied Militia, and others who had served during the late war with the United States. An Act, at the particular recommendation of the Governor in Chief, was also passed to secure the inhabitants of the Inferior District of Gaspé in the possession and enjoyment of their Lands. This district had been settled by reduced soldiers and refugees from the United-States, after the termination of the revolutionary war, who had made considerable improvements in Gaspé Bay and in the Bay of Chaleurs, in expectation of obtaining good and legal titles from Government, from which the Inhabitants had originally received Location Certificates for the grounds allotted to them. Their grants having from accidental circumstances been postponed from year to year, difficulties arose among them, owing to the total relinquishment of their lands by some, the loss of Certificates by others, and the occupancy of the lands so relinquished, by new settlers without any authority at all. The lapse of a number of years during which the occupants were improving their grounds, rendered their several claims and pretensions more and more complicated, insomuch that the Government in order that the fullest justice might be done to the claimants, recommended the subject to the consideration of the Legislature. The Act passed on the occasion, authorized the appointment of Commissioners to adjust the claims in question, with extensive powers for that purpose, and to defray the expense, appropriated the sum of two thousand pounds, although it was strongly urged that this expense ought, in equity, to be borne by the Imperial Government, upon the faith whereof these lands had been settled by persons

who

CHAP.
XI.

1819.

Trade with
the U. States.

Militia Law.

Bill to secure
the inhabi-
tants of the
District of Gas-
pé in the en-
joyment of
their Lands.

CHAP.
XI.

1819.

Court of Vice
Admiralty.

Impeachment
of Mr. Justice
Bedard.

Message from
the Governor
in Chief with
respect to the
Impeachment
of Mr. Justice
Foucher.

The Legisla-
ture prorogued

who had suffered in its cause ; and that as all public lands exclusively belonged to the crown, it was but proper that every contingency with respect to the titles of their occupants should be a charge against the mother country, rather than the colony. The investigation relative to the administration of Justice in the Court of Vice Admiralty, which in previous Sessions had occupied the House, was also resumed, but from the accumulation of more urgent concerns, was allowed to remain in suspense. Pierre Bedard, Esquire, Provincial Judge for the District of Three-Rivers, was impeached of divers alleged high crimes and misdemeanours, but on enquiry into the facts, a Special Committee reported in favor of the accused. The Impeachment of Charles Foucher, Esquire, one of the Justices of the Court of King's Bench at Montreal, which had previously created so much interest seemed, this Session, to have been tacitly relinquished. Early in the Session, a message was transmitted to the Assembly relative to the impeachment of this Gentleman, of a nature so incompatible with the notions entertained by the Assembly of its own privileges in such cases, and in the minds of the majority, so unsatisfactory as to excite the utmost discontent at the whole proceeding. After some severe and sarcastic observations on the style in which the message was couched, the subject was laid aside without further notice,* and Mr. Foucher after the Session, was directed to resume his duties as Judge of the Court of King's Bench at Montreal. Business being concluded, the Governor on the 24th of April, after a long and laborious Session, prorogued the Legislature with a Speech, the substance

* (See Appendix letter L.) In this message the Assembly were called upon to produce their *documentary evidence*. It is difficult to say what was meant by this *documentary evidence* unless it were the *Ex parte* examination, (in the nature of an inquest by a Grand Jury, before finding a Bill of Indictment) of divers witnesses taken by a Special Committee of the Assembly previous to their concurrence in the Impeachment, and which far from being *evidence against the accused*, was no more than an enquiry to satisfy the consciences of the complainants that there was cause to bring forward charges with a view to a more ample and thorough investigation by subsequent legal evidence. This call for *documentary evidence* it was therefore contended was a negatory demand for that, which, with respect to the trial and guilt of the accused was a mere nullity, and which, as in fact it had been publicly printed, must have been long ago in his possession, and had also in conformity with a standing order of the House, been formally communicated to the Governor in the progress of the enquiry. That to comply with the present message would, in some respects, be a surrender of their own privileges, it appertaining to the Assembly alone, to judge of the evidence sufficient to justify them in accusing, and would at the same time he constructively to limit their testimony against the accused, with the weight whereof it was futile to come forward, until a trial should take place before the competent tribunal, to whom it would then exclusively belong to judge of the evidence sufficient to convict, be it what it might.

stance of which cannot be more concisely given than in his own language :

“ I came to this Province to take the Government of his Majesty’s Dominions in North America, with a sincere desire of carrying into practice the intentions and liberal views of his Royal Highness the Prince Regent, to promote by every practicable measure, their general prosperity, to improve their natural resources, and the individual happiness of his Majesty’s people.

“ A reasonable hope and expectation was entertained by me, in accepting this command that I should meet in those pursuits, with the cheerful support of every well informed person, who could appreciate in his own mind my motives in undertaking the charge.

“ With these impressions on my mind, and with full confidence in your zeal, your loyalty, and your local knowledge of the public and private interests of the country, I met you on your legislative duties, and have most patiently attended to your proceedings during a long Session, which I am now to close by prorogation. You, Gentlemen of the Legislative Council, have not disappointed my hopes, and I beg to return you my thanks for the zeal and alacrity you have shown in all that more immediately belongs to your Body.

“ It is with much concern I feel myself compelled to say, that I cannot express to you, Gentlemen of the Assembly, the same satisfaction, nor my approbation at the general result of your labours, (at the expense of so much valuable time), and of the public principles upon which they rest, as recorded on your Journals.

“ You proceeded upon the Documents which I laid before you, to vote a part of the sum required for the Expenses of the year 1819, but the Bill of Appropriation which you passed, was founded upon such principles, that it appears from the Journals of the Upper House, to have been most constitutionally rejected: His Majesty’s Government has been thus left without the necessary supplies for supporting the Civil Administration of the Province for the ensuing year, notwithstanding the voluntary

CHAP.
XI.

1819.

Governors
Speech.

CHAP.
XI.

1819.

“ tary offer and pledge given to his Majesty, by the Resolve
“ of your House, of the 13th of February, 1810.

“ I recommended to you by Special Message the consi-
“ deration of the Judicature Act for such amendments as
“ should appear necessary to remedy any inconvenience
“ which time and experience in the course of the Admin-
“ istration of Justice may have pointed out as expedient :
“ and I much regret, that this important object has not
“ been brought so far to an issue, as would have enabled
“ me to transmit the result of your proceedings to his Ma-
“ jesty’s Ministers, that the opinion and assistance of the
“ Law Officers of the Crown in England, might have been
“ obtained in aid of the local knowledge and practical ex-
“ perience of those characters in this Province, who have
“ had the best opportunity of studying and understanding
“ the subject ; I trust, however, that you will be prepared
“ to proceed effectually thereon, at an early day of the next
“ Session.

“ It is with some reluctance I have given the Royal As-
“ sent to the Militia Bill, from a principle being introduced
“ into it of which I do not approve.

“ The information given me of the inconvenience which
“ would arise from losing certain services specially reposed
“ in them, for which no other provision is made by law, has
“ induced me to assent to it in confidence that it will be
“ amended in the next Session of the Legislature.—The
“ necessity of placing this local and constitutional Military
“ Force, under proper and efficient regulations by Law, is
“ strongly impressed on my mind, and no impediment
“ should be in the way of assisting it, whether embodied or
“ sedentary, with the services of half-pay officers settled in
“ the Province, or others from the regular Forces, as well
“ as those of enterprising young men drawn from the cities
“ or towns on any emergency.

“ The population of this Province afford excellent mate-
“ rials for a defensive army, but a general and proper
“ selection of officers is necessary to make it formidable to
“ an active and enterprising enemy, and that selection
“ must, in all cases, belong to the Executive power only.

“ The

“ The present time affords you an opportunity of maturely deliberating on these important objects, and on others essentially necessary to be better considered. I recommend particularly to your attention as individuals, the value of your constitution of Government, which affords the most complete and ample protection and freedom of Person and Property that can possibly be desired, and superior to every system of Government enjoyed by any Colony that has heretofore existed, your sister Colony of Upper Canada excepted. And as branches of the Legislature, it is of the first importance that you should fully understand your Constitutional Rights; that privilege may not come into question with prerogative, and that while you maintain those rights which respectively belong to you by the Constitution, you may be equally careful of encroaching on each other, and respectively pay a due regard to the rights of the Crown. I shall lay before his Majesty's Ministers the proceedings of the Session and the general state of the Revenue, the Expences, Agriculture and Commerce of the Province, and request instructions on such points as may be necessary to be more fully understood, that difference of opinion amongst those who ought to have only one object in view, may as much as possible be avoided.”

The Governor, this summer, again visited Upper-Canada, and here his existence terminated. This event occurred on his return to Montreal by way of the new settlements on the Ottawas River. On the 20th of August he left Kingston, in Upper Canada, accompanied by two Gentlemen of his Staff, Lieut. Colonel Cockburn, Deputy Quarter-Master General to the Forces, and Major Bowles, Military Secretary, and proceeded through the woods, sometimes on foot, at others in a waggon or on horseback. The weather was exceedingly warm and the first symptoms of his disease, of which he complained, was a pain in the shoulder, which left him but was succeeded by a difficulty in swallowing, to which he paid little attention and continued his journey. On the 26th, early in the forenoon, he arrived at Richmond, having walked on foot upwards of four miles through a fatiguing swamp. On his arrival, he appeared unwell, but refused to retire to a house prepared for his reception, until he had visited the settlement. In the afternoon, he again walked out and appeared better. At dinner, he mentioned the difficulty he experienced in swallowing, and expressed his surprise

The Governor visits Upper-Canada.

The Governor's illness.

surprise

CHAP.
XI.

1819.

surprise at the convulsive effect which the sight of liquid produced on him, for which he was at loss to account, observing at the same time, that none of his family had ever been in the slightest degree nervous. His attendants, however, from the efforts he was observed to make to overcome the effect of which he complained, at the appearance of liquid, began to suspect the nature of his malady to be hydrophobia. He sat up late, in conversation with his friends, and retired to rest a little before midnight, but passed an unquiet night. He rose at five in the morning, and seemed very anxious to proceed on his journey to Montreal, frequently expressing his uneasiness at being attacked by a nervous disorder, and at his unaccountable dislike to water, which he observed, had that morning been so great that he was unable to wash his face as usual, having with much difficulty prevailed upon himself to use for that purpose a towel which his servant had wet for him. He endeavoured to take some tea at breakfast, but the appearance of the liquid brought on a spasm. At an early hour in the forenoon he embarked in a canoe with one of the gentlemen, intending to proceed a few miles by water to the house of a settler, whither his horses had been sent on before him, but the disease had now become so formidable as to render him incapable of remaining on the river. He was accordingly landed, and proceeded on foot to where his horses were in waiting for him. On his way thither, the road lay along the river, to avoid the sight, and smell of which, (for he also complained of the latter) he frequently left the road abruptly, and where his way was interrupted by ravines, he was with much difficulty prevailed on to pass them, in effecting which, he seemed violently agitated. He was now sensible of his situation and occasionally spoke of the probable speedy termination of his existence, with courage and resignation. On his arrival at the settler's house to which he was proceeding, such was his horror at the sight of water, that rather than remain in the house which stood near the river, he preferred retiring to the barn from whence it could not be seen. An open passage ran through the middle of the barn which rendered the place cool, and here he seated himself in expectation of a Physician who had been sent for to Richmond, and who on his arrival bled him, which at first afforded relief. The Paroxysms, however, soon after returned with increased violence, and he availed himself of the intervals between them, while he retained his recollection, to dictate to one of the Gentlemen who attended

attended him, and took in writing such communications to his family and friends as he thought might be consolatory. In the evening he was removed into the house, and at eight o'clock on the ensuing morning, he breathed his last, so easily, from the exhaustion produced by the violent and hasty progress of his disease, that the moment of dissolution was scarcely perceived by his disconsolate friends. Tidings of his decease were announced at Montreal on the 31st August, before his illness was scarcely made known by a messenger who had been previously dispatched to prepare his family for the sorrowful event.

The remains of this nobleman were conveyed to Quebec, where they lay in state at the Castle of St. Lewis, from the 2d to the 4th September, on which day they were, with the military honors due to the rank of the illustrious deceased, deposited in a vault, prepared for the purpose, in the Cathedral, amidst a great concourse of citizens assembled to witness the solemnity of his interment, and to pay this last tribute to the memory of their departed Chief.

Of the time and manner in which the disease that occasioned his death was communicated, we are not satisfactorily acquainted. By some it has been explained by a slight scratch in the hand, received at the Borough of William Henry, a short time before his departure for Upper-Canada, from the teeth of a domesticated fox, which having been worried by dogs and exposed all day to the scorching heat of the sun, was in a state of irritation, when the Duke in passing, accidentally observed, and incautiously approached the animal with intention to appease it.*

Others have, perhaps, erroneously attributed his malady to over-exertion in travelling during excessively warm weather through a new and woody country, over rough and swampy roads to the new settlements, which, from a sense of duty, he was anxious by visiting them in person, and witnessing the progress already made, to encourage and promote.

It

* This may, indeed, have been the real cause. It is asserted as a curious and well attested fact, that the fox died shortly after the bite was inflicted, and that the Duke, during his illness, to the very last, constantly complained of the offensive smell of stinking animals, and this was the reason why he caused himself to be removed, in the evening, from the barn into the house, by which he hoped for relief from this imaginary annoyance. Physicians say that patients labouring under the hydrophobia, almost without exception, complain of the same inconvenience.

CITAP.
XI.

1819.

The Govern-
or's decease,
28th Aug. 1819.

CHAP.
XI.

1819.

It must be acknowledged that in proroguing the Parliament he conveyed his sentiments to the Assembly in blunter terms than are reconcilable with the usually-received notions of the circumspection of a wary politician. His Speech on that occasion bespeaks, however, a mind too conscious of its own uprightness to stoop to those popular shifts which almost as often defeat as ensure the intended purpose. The late DUKE OF RICHMOND possessed a sound judgment, with a quick and clear discernment. It is even said that few men of the age were endowed with such extraordinary powers of mind when called into action on great and momentous subjects. In his purposes he was firm without precipitancy, yet ever open in matters of doubtful importance, to dissuasion by those whose candour he had no cause to suspect. Of his own opinions, as they were formed with caution, he was peculiarly tenacious, but he invariably shewed the utmost deference for those of other men, when in the pursuit of his public duties he was compelled to differ with them. In stature he was above the ordinary height, stout and well proportioned; his countenance was strong and manly, and, though rather of a serious cast, expressive of those generous and exalted qualities of the soul for which in public and private life he was alike distinguished. Although fond of athletic amusements, and addicted to pleasure, he was nevertheless the man of business, and could with incredible dispatch expedite the most intricate concerns without any seeming exertion. He was of a frank communicative disposition, and in the army, in which he held the rank of General, was universally beloved, and denominated by the familiar appellation of the soldier's friend. With what success he would have continued to administer the Government of this Province we pretend not to say. Of his zeal to promote its prosperity there need not be a doubt, and they, upon whose ingenuousness reliance can be placed, that were well acquainted with his views, assert them to have been uninfluenced by party considerations, liberal in the extreme, and worthy of a noble and patriotic statesman.

CHAPTER

ADMINISTRATIONS OF
JAMES MONK, ESQUIRE,

AND OF

SIR PEREGRINE MAITLAND,
K. C. B.

CHAPTER XII.

IN consequence of the decease of the Duke of Richmond, the temporary Government of the Province, until his Majesty's pleasure should be known, devolved upon **JAMES MONK, Esquire**, Chief Justice for the District of Montreal, as senior Member of the Executive Council, who, accordingly assumed the administration of the Government, of which he gave notice by Proclamation, on the 20th September, 1819. He was, however, soon superseded by **SIR PEREGRINE MAITLAND**, the Lieutenant Governor of Upper-Canada, who, as Military Officer commanding the Forces in the Canadas, was directed by orders from England, to administer the Government of Lower-Canada, until the arrival at Quebec, of his Lordship the Earl of Dalhousie, promoted from the government of Nova-Scotia, to the chief command of the British North American Colonies. That officer accordingly repaired to Quebec with his family, where he arrived on the 7th February, 1820, and on the 9th departed again for Upper-Canada to meet the Legislature of that Province, which was to meet on the 21st of the same month, leaving Mr. Monk still in charge of public affairs in the Lower-Province. This Gentleman previous to his knowledge of the appointment of Sir Peregrine Maitland, had, by a Proclamation appointed the 29th February for the meeting of the Legislature. This resolution, after the arrival of the Administrator in Chief, was suddenly changed, and on the day of his departure for Upper-Canada, Mr. Monk issued another Proclamation dissolving the Parliament, and appointing the 11th April ensuing,

CHAP.
 XII.

1819.

Mr. Monk assumes the government of L. Canada, as senior member of the Executive Council.

Is superseded by Sir Peregrine Maitland, K. C. B.

1820.

Mr. Monk dissolves the Parliament.

E

ensuing,

CHAP.
XI.

1820.

ensuing, as the day upon which the writs for the new elections were to be returnable, except the writ for the county of Gaspé, the return whereof was by the same Proclamation extended to the 1st June next ensuing. This unexpected and impolitic measure, which the experience of former administrations had uniformly shewn to be prejudicial to the views of the Executive, by weakening its influence in the Assembly, could not be otherwise explained, than by the difference in opinion between that House and the Legislative Council, which had existed last Session with respect to the Civil List. The elections, as on former occasions under similar circumstances, were decisively unfavorable to those, who, in coincidence with the supposed views of the Executive, had combated the bill passed by the Assembly providing for the payment of the Civil List by *items*, and few of those members were returned.

SIR PEREGRINE MAITLAND having, in the mean time, after a short Session, prorogued the Parliament of Upper-Canada, returned to Quebec, and on the 17th March, relieved Mr. Monk, who had conducted the business of the Province generally, to the satisfaction of the public, with the exception of the dissolution of the Assembly. This step, it was reported, with what truth we cannot vouch, he reluctantly took, contrary to his own better opinion, under circumstances which he either had not the discretion, or the fortitude to controul.

Opening of
the new Parli-
ament.

On the 11th of April, the greater part of the members who had been elected attended at Quebec, in expectation of a Session at the return of the writs, and the Administrator in Chief accordingly went to the Council Chamber, and opened the Session with a short speech. After the Assembly had re-elected their late Speaker, Mr. Papineau, the first subject to which this body turned its attention was an enquiry into its own competence to proceed to the dispatch of business, no member for the County of Gaspé having as yet been returned. In the mean time the Governor sent a message to the House, recommending the renewal of certain Acts of the Legislature, to which no attention was paid. By law the Assembly of Lower-Canada cannot consist of less than fifty representatives, who must be called together once at least in every twelve Calendar months. It was made apparent by the returns ordered by the house to be produced and laid before it, by the Clerk of

The house of Assembly declares itself incompetent to proceed to the dispatch of business.

of the Crown in Chancery, that this number was not complete, and it was therefore unanimously resolved, "That the representation of the Province being incomplete, no member having as yet been returned for Gaspé, the House was incompetent, and could not proceed to the dispatch of business."* The twelve months, within which the Assembly ought by law to sit, were to expire on the 24th April, (the day on which the preceding session closed last year) and unless a member were returned for Gaspé on or before that day, so as to render the Assembly competent for the dispatch of business, it might become a question whether that body had been duly called together within the time limited by law. Some there were, who did not scruple to assert that the late dissolution was in its consequences tantamount to a violation of the act of the Imperial Parliament, creating the Constitution of the Canadas.† These proceedings were formally communicated by the Assembly, to the Governor on the 20th April, who briefly expressed to the House his regret that the public business

* It is to be observed that the writ for the election of a representative for the County of Gaspé was, in common with the writs for other Counties, made returnable on the 11th of April. The remote situation of that District, induced the Legislature in 1802, by an Act, to extend the period for the return of writs of election, for that County, to one hundred days, instead of fifty, as allowed for other Counties. Many were of opinion that the writ was null, inasmuch as it ought not, in conformity with the Proclamation, to have been returnable sooner than one hundred days after its date, and that the Assembly could not legally sit until the return was made; because, said they, the Act could not bear any other interpretation, consistently with the purpose for which it was intended, namely, to secure that District its share in the representation of the Province, from the very opening of the Legislature. Others were of a different opinion, and agreed that the period for the return of the writ was proper as it stood; that the extension given by this Act to the return of the writ, which often it might not be possible to effect in fifty days, was to enable the returning officer to make a legal return, at any time within fifty days after the day when made returnable, and thereby to remove all doubts on the validity of such return; that the Act, far from requiring that the writ should not be made returnable in less than one hundred days, provided expressly "that it should be made returnable to a number not exceeding one hundred days" from the day of its date. These arguments were, however, rather speculative than otherwise, as we believe it was solely the essential fact that no member had, as yet, been returned for Gaspé, that led to the unanimous conclusion adopted by the Assembly of its incompetence for the dispatch of business.

† Among the original arguments on this subject, *pro* and *con*, there was one which, from its mere *originalité* deserves to be recorded. A gentleman, in the course of his reading, had discovered that a Corporation, (of a city for instance) by a negligence or misuse of its franchise, whereby it broke the condition upon which it was incorporated, was, or at least might be, dissolved. This principle, with what sagacity we leave to others to determine, he gravely applied to the Constitution of the Province, and vehemently contended that the Corporation was accordingly extinct!!

CHAP.

XII.

1820.

Assembly
dissolved.

business should be prevented by its resolutions, which he observed, his duty constrained him to say he did not admit to be in any respect well founded. The Assembly, notwithstanding, persevered in their resolution, and refused to receive a Message from the Legislative Council, where a bill had been passed, which was now sent to the Lower House by a Master in Chancery, against whom the door remained closed. In this state of incompetence the Assembly remained until the 24th April, when the receipt of official news of the King's demise, of which unofficial accounts by way of New-York, had previously reached Quebec, on the 18th March, removed the dilemma, by affording the Administrator a constitutional ground for dissolving the Legislature. He, therefore, went down with the usual formalities, and having summoned the attendance of the Assembly at the bar of the Legislative Council, he without the least allusion to their proceedings, announced his Majesty's demise, by which the crown of the United-Kingdom of Great Britain and Ireland, was rightfully come to His present most gracious Majesty George the Fourth. The Speaker of the Legislative Council, by command of the Administrator in Chief, then declared the Provincial Parliament, in consequence of the decease of our late Sovereign Lord, King George the Third, to be dissolved. Minute guns were fired, accompanied with the tolling of bells during this ceremony, after which a royal salute of one hundred guns in honor of His Majesty's accession took place, at the conclusion whereof, the new King was solemnly proclaimed on the *Place d'Armes* and other public places at Quebec, by the Sheriff of the District and his Deputy, in presence of the Administrator in Chief, attended by the principal Civil and Military heads of Departments, the troops of the garrison under arms, and a vast concourse of Citizens. The same solemnities were observed at Montreal, Three-Rivers, and in other Towns and Villages throughout the Province.

Arrival of
his Lordship
the Earl of
Dalhousie.

The arrival of His Lordship the EARL OF DALHOUSIE, the Governor in Chief, on the 18th of June, from Halifax, in His Majesty's Frigate the Newcastle, put a period to this short but eventful administration. It is but reasonable to suppose that the Assembly must have participated in the feeling which the recent dissolution and general election had created throughout the Province, and this feeling could not have been soothed by the certain prospect, even previous to the meeting of the Legislature, of another dissolution

tion, and a renewal of the Elections, in consequence of the King's demise. The cool, and cautious manner in which the Administrator, at this perplexing juncture, met the resolutions of the Assembly, softened the spirit of that body, and it seems to be now generally admitted, that, whatever might have been the error in dissolving the preceding Parliament, the mode in which the Administrator in Chief negotiated with, and dispatched the present Assembly, was characterised with wisdom.

CHAP.
XII.

1820.

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APPENDIX.

E.

LEGISLATIVE COUNCIL,

Wednesday, 2d March, 1814.

Resolved, That by the criminal Law of England and of this Province, no man can be charged with, or impeached of any crime or criminal offence, but by an inquest of the country, the cases excepted in which an information on the part of the crown may be filed.

Resolved, That the lawful inquest of every county, district or government, by whose ministry any subject of his Majesty is charged with, or impeached of any crime or criminal offence, however chosen or appointed, represents, for the purpose of such charge or impeachment, the entire community of the people of the county, district or government, in which such subject is so charged or impeached, and acts on their behalf, and in their right.

Resolved, That the right to charge or impeach any officer or officers of his Majesty's Government in this Province, with or for any crime or criminal offence or misdemeanor in office, (if any such right exists in this Province,) is by law vested in the entire community of the people of this Province.

Resolved, That the right to charge or impeach any officer or officers of his Majesty's government in this Province, with or for any crime or criminal offence, or misdemeanor in office, doth not vest, nor can be vested in any one part of the people of this province, more than in another, but is vested in the whole collectively, generally and equally.

Resolved, That since the right to impeach any officer or officers of his Majesty's government in this province, with or for any crime, criminal offence or misdemeanor in office, doth not vest in any one part of the people of this province more than in another, but is vested in the whole collectively, generally and equally; the right to charge any officer or officers with or for any crime, criminal offence or misdemeanor in office, doth not, nor can exclusively exist in the representatives of any one part of the people of this province, nor can by them be exercised without the participation of the remainder.

Resolved, That the members of this house are a component part of the people of this province.

Resolved, That the members of this house being appointed by the crown for life, do sit and vote in the provincial parliament in their own right, and are not represented in the assembly.

Resolved, That the assembly of this province, inasmuch as the members of this house are a component part of the people of this province, and are not therein represented, are the representatives of a part only of the people of this province.

Resolved, That every charge or impeachment of the assembly alone, is a charge or impeachment of a part only of the people of this province.

Resolved, That every charge or impeachment by the assembly alone, being a charge or impeachment by a part only of the people of this province, no charge or impeachment of any officer or officers of his majesty's government in this province, with or for any crime, criminal offence or misdemeanor in office, can by the laws and constitution of this province be exhibited by the assembly alone, nor without the participation of this house.

Resolved, That the Imperial Parliament of the United Kingdom of Great Britain and Ireland, is the true and perfect representative of the entire community of the people of the said United Kingdom.

Resolved, That the right to charge or impeach any officer of his majesty's government, with or for any crime, criminal offence, or misdemeanor in office,

APPENDIX.

is by the law and constitution of the United Kingdom of Great Britain and Ireland, vested in the entire community of the people of the said United Kingdom, but is exercised on their behalf, and in their right by the house of commons alone, to the exclusion of the house of Lords.

Resolved, That the right of hearing and determining all impeachments exhibited in the United Kingdom of Great Britain and Ireland, by the people of the said United Kingdom, by the ministry of the house of commons, is by the law and constitution of the said United Kingdom vested in the house of lords, to the exclusion of the house of commons and of every other tribunal.

Resolved, That the exclusive right of hearing and determining all impeachments exhibited in the United Kingdom of Great Britain and Ireland, by the people of the said United Kingdom, by the ministry of the house of commons, being vested in the house of lords, the house of lords is thereby, and thereby only, excluded from all participation in voting or exhibiting any such impeachment. The offices of censor and judge being totally incompatible.

Resolved, That the right of hearing and determining impeachments exhibited in this province by the people of this province, is not vested in the legislative council of this province, and that the legislative council is not, therefore, excluded from a participation in voting or exhibiting any such impeachment.

Resolved, That the impeachment of the honourable Jonathan Sewell, his majesty's chief justice of this province, by the assembly alone, is an illegal and alarming assumption of power on the part of the assembly.

Resolved, That the impeachment of the honourable James Monk, chief justice of his majesty's court of king's bench, for the district of Montreal, by the assembly alone, is an illegal and alarming assumption of power on the part of the assembly.

Resolved, That the said impeachment of the honourable Jonathan Sewell, and of the honourable James Monk, by the assembly alone, tend, in their immediate consequences, to deprive this house of its lawful rights and privileges; to give to the assembly an ascendancy and control over this house, which is entirely incompatible with the due exercise of its legislative powers; and to render the Judges of this province, and all other officers of the crown, in this province, dependant on the assembly, and thereby endanger, not only the right administration of justice in this province, but the right administration of his majesty's provincial government in general.

Resolved, That this house doth solemnly protest against the said impeachments of the honourable Jonathan Sewell, and the honourable James Monk, by the assembly alone, and against all proceedings whatever, which have been and shall be had on the said impeachments, or on either of them.

F.

The order of his royal highness the prince regent in council, upon the complaints of the house of assembly of Lower Canada, against the chief justice of the province, the chief justice of the court of king's bench for the district of Montreal, the executive council (judges in the court of appeal) and the puisne justices of the courts of king's bench for the district of Quebec, and Montreal, in the same province, respecting the rules of practice established in those courts, with other documents respecting the decision of his royal highness upon the remainder of the complaints by the said assembly.

No. 1.

(For this, see the order in council under the letter G. in this Appendix.)

No. 2.

Downing-Street, July 29, 1815.

SIR,

His royal highness the Prince Regent, having been pleased to refer to the consideration of a committee of the most honourable privy council, certain articles of complaint against you and Mr. Monk, so far as related to the rules of practice established by you in the courts in which you respectively preside, it now becomes my duty to communicate to you the result of that inquiry, which having received the entire approbation of his royal highness, is expressed in the order of which the enclosed is a copy. (No. 1.)

The

APPENDIX.

The officer at present administering the Government of Canada, has received his Royal Highness's commands to communicate this decision to the House of Assembly; and in making this communication to state the grounds upon which his Royal Highness has declined considering, as articles of complaint against you, the advice which you are at different times stated to have given to the preceding governors of the province. It is highly satisfactory to me to assure you, that although his Royal Highness felt compelled upon general principles to exclude those particular charges from consideration, and thus to preclude you from entering upon your justification, yet his Royal Highness entertains no doubt as to the general propriety of your and Mr. Monk's conduct, or as to your being able to offer, with respect to them, a full and satisfactory explanation.

I am, Sir,

Your most obedient, humble servant,

(Signed)

BATHURST.

To J. Sewell, Esq. }
Chief Justice of Lower-Canada. }

No. 3.

Downing Street, July 27th, 1815.

SIR,

I have had the honour of receiving your letter of the 24th instant, expressing your apprehension, that as the instructions transmitted to the Officer administering the Government of Canada, do not embrace any other charges brought against you and Mr. Monk, than those which relate to advice given by you to the Governor, and the Rules of Practice established in your respective Courts, the House of Assembly may be induced to consider you as not free from blame on the other points of charge, not strictly falling within that description.

As the letter addressed to the officer administering the Government of Canada, bears testimony to the uniform propriety of your's and Mr. Monk's conduct, I do not conceive that there can be any ground for the House of Assembly to doubt that your justification is complete: but, I am glad to have an opportunity of stating that the charges not specifically adverted to in my letter, appeared to be, with one exception, of too little importance to require consideration, and that (the one against Mr. Monk, which charges him with having refused a writ of *habeas corpus*) was, as well as all the other charges, which are not founded on the Rules of Practice, totally unsupported by any evidence whatever.

I have the honour to be, Sir,

Your most obedient humble servant,

(Signed)

BATHURST.

J. Sewell, Esq. }
Chief Justice of Lower-Canada. }

No. 4.

COUNCIL OFFICE,

Whitehall, August 17th, 1815.

SIR,

Agreeably to the request, signified in your letter of the 30th ultimo, I have the honour to enclose you a copy of the Order in Council, dismissing the complaints of the House of Assembly of Lower-Canada, so far as they relate to the Rules of Practice, &c. with the names of the lords present in

F

Council,

APPENDIX.

Council, when the report of the lords of the committee respecting those complaints was approved.

The report of the Lords of the Committee is entered at length in the copy of the order; but it is not the practice to insert the names of the Lords who make the report; yet, as it is important that it should be known in Canada, by what high legal authority the said report was made, I have it in command from the Lord President to communicate their names to you, and they are as follows:

THE LORD PRESIDENT,
EARL BATHURST,
LORD ELLENBOROUGH,
SIR WILLIAM SCOTT,
MASTER OF THE ROLLS,
SIR JOHN NICHOLL,
LORD CHIEF JUSTICE GIBBS,
LORD CHIEF BARON.

I have the honour to be, Sir,

Your most obedient humble servant,

(Signed)

CHETWYND.

J. Sewell, Esq.
Chief Justice of Lower-Canada. }

G.

(Signed)

GORDON DRUMMOND,
Administrator in Chief.

The Administrator-in-Chief has received the commands of His Royal Highness the Prince Regent, to make known to the House of Assembly of this Province, his pleasure on the subject of certain charges preferred by that House against the Chief Justice of the Province, and the Chief Justice of the Court of King's Bench for the District of Montreal.

With respect to such of those charges as relate to acts done by a former Governor of the Province, which the Assembly assuming to be improper or illegal, imputed to a similar assumption to advice given by the Chief Justice to that Governor, his Royal Highness has deemed that no inquiry could be necessary; inasmuch as none could be instituted without the admission of the principle, that the Governor of a Province might, at his own discretion, divest himself of all responsibility on points of political government.

With a view, therefore, to the general interests of the Province, his Royal Highness was pleased to refer for consideration to the Lords of the Privy Council, such only of the charges brought by the Assembly as related to the Rules of Practice established by the Judges in their respective Courts, those being points upon which if any impropriety had existed, the Judges themselves were solely responsible.

By the annexed copy of His Royal Highness's Order in Council, dated the 29th June, 1815, the Administrator-in-Chief conveys to the Assembly the result of this investigation, which has been conducted with all that attention and solemnity which the importance of the subject required.

In making this communication to the Assembly, it now becomes the duty of the Administrator-in-Chief, in obedience to the commands of his Royal Highness the Prince Regent, to express the regret with which his Royal Highness has viewed their late proceedings against two persons who have so long and so ably filled the highest judicial offices in the colony, a circumstance the more to be deplored as tending to disparage, in the eyes of the inconsiderate and ignorant, their character and services, and thus to diminish the influence to which, from their situation and their uniform propriety of conduct, they are justly entitled. The

APPENDIX.

The above communication embracing such only of the charges preferred against the said Chief Justices as relate to the Rules of Practice, and as are grounded on advice assumed to have been given by the Chief Justice of the Province to the late Sir James Craig, the Administrator-in-Chief has been further commauded to signify to the Assembly, that the other charges appeared to his Majesty's Government to be, with one exception, too inconsiderable to require investigation, and that *that*, (namely the one against the Chief Justice of the Court of King's Bench for the District of Montreal, which states him to have refused a writ of habeas corpus,) was, in common with all the charges which do not relate to the Rules of Practice, totally unsupported by any evidence whatever.

(Signed)

G. D.

*At the Court of Carlton-House,
the 29th June, 1815.*

PRESENT:

His Royal Highness the PRINCE REGENT IN COUNCIL

Whereas there was this day read at the board, a report from a committee of the Lords of his Majesty's most honourable Privy Council, dated the 24th of this instant, in the words following, viz:

"Your Royal Highness having been pleased by your Order in Council, of the 10th December inst. in the name and on the behalf of his Majesty, to refer unto this committee a letter from Earl Bathurst, one of his Majesty's principal Secretaries of State, to the Lord President of the Council, transmitting a copy of a letter from Sir George Prevost, dated Quebec, the 18th of March, 1814, forwarding an Address of the House of Assembly of Lower-Canada, to your Royal Highness, with certain articles of complaint therein referred to, against Jonathan Sewell, Esq. his Majesty's Chief Justice of the Province of Lower-Canada, and James Monk, Esquire, Chief Justice of the Court of King's Bench for the district of Montreal, and also transmitting a Memorial from the Executive Council, Judges in the Court of Appeals, and of the Puisne Judges of the Court of King's Bench for the District of Quebec, and of the Court of King's Bench for the District of Montreal, in the said Province of Lower-Canada, praying to be included in the examination and decision of the said articles of complaint, together with a Petition from the said Jonathan Sewell, Esq.; in which letter the said Earl Bathurst requests that so much of the said complaints of the House of Assembly, as relate to the Rules of Practice, stated to have been introduced by the said Chief Justices into their respective Courts, may be submitted to your Royal Highness in Council, in order that, if such Rules shall be found to have been introduced, it may be decided whether in so doing, the said Chief Justices have exceeded their authority.

The Lords of the committee in obedience to your Royal Highness's said order of reference, have taken the said letter and its enclosures into consideration, and having received the opinion of his Majesty's Attorney and Solicitor-General, and been attended by them thereon, and having maturely deliberated upon the complaints of the said House of Assembly, so far as they relate to the said Rules of Practice, their Lordships do agree humbly to report as their opinion to your Royal Highness, that the Rules which are made the subject of such complaint of the said House of Assembly of Lower-Canada, against the said Chief Justices Jonathan Sewell, Esq. and James Monk, Esq. which their Lordships observe were not made by the said Chief Justices, respectively upon their own sole authority, but by them in conjunction with the other Judges of the respective Courts, are all Rules for the regulation of the practice of their respective Courts, and within the scope of that power and jurisdiction with which, by the rules of law, and by the colonial

APPENDIX.

nial ordinances and acts of legislation these Courts are invested, and consequently that neither the said Chief Justices nor the Courts in which they preside have, in making such Rules, exceeded their authority, nor have been guilty of any assumption of Legislative power."

His Royal Highness the Prince Regent having taken the said report into consideration, was pleased in the name and on the behalf of his Majesty, and by and with the advice of his Majesty's Privy Council, to approve thereof, and to order, as it is hereby ordered, that the said complaints, so far as they relate to the said Rules of Practice, be and they are hereby dismissed this board.

(Signed)

JAS. BULLER,

(Signed)

G. D.

H.

Resolved, As the opinion of this Committee, that the resistance and opposition of the Legislative Council of which the said Jonathan Sewell and James Monk, were, and are Members, to the rights of the commons of Lower-Canada, to exhibit the said charges, and the obstructions subsequently interposed to the prosecution of them, prevented this House from being represented by an Agent to maintain and support the charges.

Resolved, As the opinion of this committee, that this House has always been, and is desirous of an opportunity of being heard on the said charges, and of supporting them by evidence, and hath reason to lament that no such opportunity hath hitherto been offered to them.

Resolved, As the opinion of this committee, that an humble representation and petition, on the behalf of the commons of this Province, to his Royal Highness the Prince Regent, be prepared, appealing to the justice of his Majesty's Government, and praying that an opportunity may be afforded to his Majesty's dutiful commons of this Province, to be heard upon and maintain the said charges.

I

LEGISLATIVE COUNCIL,

Saturday, 1st March, 1817.

Resolved, That an humble Address be presented to His Royal Highness the Prince Regent, humbly beseeching his Royal Highness not to inflict any punishment upon the honourable Louis Charles Foucher, Esq. one of the puisne Justices of the Court of King's Bench for the District of Montreal, in consequence of the articles of complaint exhibited against him by the Assembly of this Province, until such articles of complaint shall have been submitted to the consideration of this House, and this House shall have concurred therein, and such articles of complaint after such submission and concurrence shall have been heard and determined in such tribunal as his Royal Highness shall be pleased to appoint for that purpose; or, until such articles of complaint, without such submission and concurrence, shall have been heard and determined in due course of justice in this House, under such commission as his Royal Highness shall see fit to issue for that purpose, with such powers and limitations as to His Royal Highness shall seem meet.

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CASTLE OF ST. LEWIS,

Quebec, 19th February, 1817.

SIR,

The Chief Justice of the Court of King's Bench, for the District of Montreal, having addressed to me a letter explanatory of the cause of his absence from Montreal, in March, one thousand eight hundred and sixteen,

at

APPENDIX.

at the period when the Court is by law appointed to sit there, for the trial of criminal causes, for which absence, a charge has been brought against him in the House of Assembly, I think it proper to transmit you a copy of this communication, and of the enclosure which accompanied it, in order that in any further proceedings of the Assembly on this subject, they may be informed of the circumstances represented by the Chief Justice.

I have the honour to be,

Sir,

Your most obedient

Humble Servant,

(Signed)

J. C. SHERBROOKE.

J. L. Papineau, Esqr. Speaker }
of the House of Assembly. }

(COPY)

MONTREAL,

February 14th, 1817.

SIR,

As I find the House of Assembly is proceeding under a committee, upon a Petition presented to that House, by Samuel Sherwood, one of the Members thereof, made early in the Session of the present Legislature, wherein he has stated, "that I had absented myself from sitting in and holding a Court of King's Bench for the District of Montreal, on the first ten days of the month of March last past, whereby the said Court was not held, and the law of the land was dispensed with contrary to the bill of rights," and as this assertion may improvidently be brought forth as a charge against my official character and duties; in a case where the prerogative of the Crown has been legally exercised, and when the conduct of its officer is not culpable, I am impressed with the duty of presenting to your Excellency my conduct, and the exercise of the prerogative in respect to my duties upon holding the said Court in the month of March last. Your Excellency will perceive by the enclosed letter, the express injunctions of his Excellency the Administrator in Chief, and may be a better judge than I can presume, of the reasons that occasioned his exercise of the rights of the Sovereign in respect to my duties; and your Excellency will justly appreciate how far the Assembly should be permitted to proceed in a formal charge, which I submit could not take place were that House officially apprized of the circumstances attending the conduct that had superinduced a supposed culpability in a servant of the crown.

I have the honour to be,

&c. &c.

(Signed)

J. MONK.

His Excellency Sir John Coape }
Sherbrooke, K. C. B. &c. &c. &c. }

(COPY.)

CASTLE OF SAINT LEWIS,

Quebec, 15th February, 1816.

SIR,

With reference to the representation you have made to his Excellency the Administrator in Chief, of your intention of proceeding shortly to Montreal,

APPENDIX.

Montreal, to attend there the approaching Session of the King's Bench, for the trial of criminal causes, I am commanded by his Excellency to acquaint you, that he conceives your presence here indispensably necessary, to preside as Speaker in the Legislative Council.

I have the honour to be,

&c. &c. &c.

(Signed)

ROBERT R. LORING,
Secretary.

The Hon. Chief Justice Monk.

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Monday, 18th February, 1819.

RICHMOND, LENNOX, & AUBIGNY,
GOVERNOR IN CHIEF.

The Governor in Chief acquaints the House of Assembly, that he has received the instructions of his Royal Highness the Prince Regent, as to the manner in which his Royal Highness's commands respecting the proceedings of the House of Assembly against Mr. Justice Foucher, which were communicated to the Assembly by Message, upon the second day of March last, are to be carried into execution.

His Royal Highness the Prince Regent, considers it most advisable, and has accordingly been pleased to direct, that the Assembly, previous to any ulterior proceedings, do adduce without delay, and do deliver to his Grace the Governor in Chief, such Documentary Evidence as they may consider adequate to support the Charges which they have brought against Mr. Justice Foucher, and that copies of such charges of such Documentary Evidence, and of the examinations already taken and annexed to the charges be then transmitted by his Grace the Governor in Chief, to Mr. Justice Foucher, for his answer and defence.

And his Royal Highness has been further pleased to direct, that the answer and defence of Mr. Justice Foucher, be by his Grace the Governor in Chief, communicated to the Assembly, for their reply, and that the whole of the Documents, as soon as the reply of the Assembly shall be received, shall be by him transmitted to his Royal Highness the Prince Regent, for such further course as the case may require.

Rd. &c.

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RING,
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