

REMARKS AND OBSERVATIONS
ON THE
CONSTITUTION OF THE CANADAS,

CIVIL AND ECCLESIASTICAL;

WITH A VIEW TO ITS AMENDMENT:

INCLUDING

SUGGESTIONS AND RECOMMENDATIONS NOT BEFORE
PUBLISHED.

BY A LAYMAN
OF THE CHURCH OF SCOTLAND.

[THOMAS BLACKWOOD]

TO WHICH IS ADDED,

AN APPENDIX,

CONTAINING SEVERAL INTERESTING AND IMPORTANT PAPERS.

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REMARKS AND OBSERVATIONS

ON

CONSTITUTION OF THE CANADA

CIVIL AND ECONOMIC

WITH A VIEW TO ITS AMENDMENT

BY

THE HONOURABLE JOHN A. MACDONALD

PROPOSITIONS AND RECOMMENDATIONS NOT BEFORE

PRESENTED

TO THE HOUSE OF COMMONS

IN PARLIAMENT ASSEMBLED

ON THE 11th MARCH 1871

BY THE HONOURABLE JOHN A. MACDONALD

MINISTER OF THE CROWN

AND OF THE MARITIME PROVINCES

AND APPENDIX

CONTAINING SEVERAL INTERESTING AND IMPORTANT PAPERS

MONTREAL

PRINTED BY J. B. TARDIEU & CO.

1871

PREFACE.

THE writer of this pamphlet has, for several reasons, deemed it proper to withhold his name from the public; but many, with whom he is personally acquainted, will, on perusal, readily ascribe it to him. Only a small number of copies have been printed, intended for distribution among some public characters and others, upon whose opinions and decisions the settlement of Canadian affairs may be considered chiefly to depend.

In giving the substance of, or quoting from, different authorities, great care has been taken to refer to them so particularly that any person, who chooses to take the trouble, may be satisfied whether or not anything be advanced inconsistent with such authorities. In every particular that is of much importance, the writer considers himself borne out by the writings, Acts of Parliament, &c. to which references are made; and his name, no more than that of any other private individual, could confer very little additional authenticity, beyond the narrow circle of his own acquaintance. He hopes that the different topics, briefly noticed or treated of, in this production, may not in future be discussed in that angry tone and virulent style, sometimes too prevalent in many newspapers and other publications. With this view he has, as much as possible, abstained from using opprobrious terms and acrimonious expressions, in speaking of those who do not coincide in his opinions; being well convinced that a good cause is frequently much injured by intemperate language and violent controversy.

In the pamphlet there occurs a repetition of some arguments or facts that appear also in the Appendix, No. V. That long article was occasioned by debates of the Legislature of Upper Canada, in 1835; the other, being written three years after, and touching in several parts on the same or similar topics, in consequence of subsequent occurrences and proceedings, some repetitions were unavoidable. However, it is believed they will not occasion any objections nor prove tiresome to the reader.

The speech of the Solicitor General, given in the Appendix, No. 6, does not appear to be the same version referred to by Mr Cartwright and Mr Manahan, in the explanatory letter and certificate that follow it. The writer has not seen the paper called the "Constitution," spoken of by Mr Cartwright, but he has read a longer and more detailed, though not exactly contradictory, report of the speech in the Bathurst Courier, of 3d March, 1837. It is to that version which he more particularly alludes in what is said in page 51. It contains some more irritating expressions and remarks applied to the Scottish nation, which it would serve no good purpose to republish. The names of two other ministers of their Church (besides one mentioned in the Appendix) are also introduced, in no very complimentary style. In consequence, one of them published in the newspapers, a very spirited letter on the subject, addressed to the Solicitor General.

MONTREAL, LOWER CANADA, }

31st October, 1838. }

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OR

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ERRATA.

Page 49, line 3, after *Canada*, add *in favour of the Church of Scotland*; the sentence will then stand as follows:—

The only movement, that I am aware of, by the Legislature of Upper Canada, in favour of the Church of Scotland (and that was by the Assembly alone), is a petition to the King, in 1824, which is introduced into the evidence of Mr J. C. Grant, before the Canada Committee of the House of Commons, on the 17th June, 1828.

Page 95, line 8 from foot—for *confirming* read *conforming*.

Page 96, line 8 from foot—for *desitute* read *desolate*.

REMARKS, OBSERVATIONS, &c.

AFTER the inhabitants of the Canadas, generally, had maintained their allegiance to the Crown of Great Britain, during the invasion by the revolted Colonies in 1775; and again so nobly defended the country during the war with the United States, that began in 1812; it has occasioned great surprise and excited indignation, that they should, in 1837, have raised the standard of rebellion, without any real grievance or oppression to complain of; and at a time when they could have no reasonable hope of success, the United Kingdom being at peace with all the world.

My object, therefore, in taking up the pen, is to endeavour to account for the insurrection, or to point out some of the causes that appear to have led to this deplorable and extraordinary state of public affairs: to make some remarks on the remedies proposed from different quarters, particularly when they appear inadequate to the end proposed: and, lastly, to recommend or suggest, as occasions offer, such remedies and healing measures as appear most just and efficacious for removing all reasonable complaints, and restoring peace, contentment, and general loyalty throughout both Provinces. I am well aware of my inability to do justice to this important subject, from want of the requisite education and knowledge of public affairs; also, from not having the necessary access to authorities and public documents which it would be desirable to consult;

so, in some cases I must trust to memory and to public notoriety, in matters of recent occurrence.

Several causes have no doubt operated in originating and increasing the strong party feeling which at last produced an insurrection in the District of Montreal. Sir Charles Grey, in the minute added to the General Report of the Commissioners of Enquiry, at page 65, speaks of "the state of repulsion and antipathy towards each other (no gentler terms will convey the truth) in which, as far as all questions of internal policy are concerned, the two parties exist." And, at foot of the same page, he says, "there are pretensions on either side which must be repressed."

The chief causes that have produced this unfortunate hostile feeling, are, the difference in language and religion of the two parties; and in their customs and manners, which have prevented them from coalescing and forming, as it were, one society in the cities, towns, and villages; to which may be added, the injudicious and mistaken policy of the Provincial, and likewise the British Government, at different periods. The injurious effects of *lods et ventes*, by operating as a heavy tax on industry and improvements; and the many disastrous consequences to commerce, arising from *secret and general* mortgages, have also occasioned serious and just complaints by emigrants from Great Britain and Ireland, or their descendants. Many of these, with other complaints from both parties, have been ably investigated by the Royal Commissioners of Enquiry; and, as their Reports have been published, it would be superfluous and presumptuous in one, who has not made the law his study, to attempt a revision of their labours. But this will not prevent me from freely stating my opinion on any topic within my competence, though it may differ from what has been expressed by them or others.

When the Provincial Parliament of this Province first met, in December 1792, both Houses were occupied for some time in framing rules and regulations for their proceedings. In the House of Assembly a question arose which occasioned warm debates and tried the strength of the two parties. The French Canadians, as they are now usually called, argued that the text

of the Acts to be passed (*la langue statuante*) or the *enacting language*, should be *French*, which they had been accustomed to in public proceedings, and which was the only language they understood: those of British and Irish origin or descent, on the contrary, maintained that it ought to be *English*. After much discussion, a compromise was spoken of among some of the leading members; namely, that the text of *criminal* laws should be *English*, the English Criminal Law having been previously introduced into the Province; but the text of all other laws should be *French*. The Lieutenant Governor, General Clarke, who knew what was going on, but could not with propriety interfere directly, had sent them a message, on the 8th January, 1793, containing information of instructions he had received: and, among other things, that he could not assent to any Bill, unless the preamble contained certain words, reciting the title of the British Act of Parliament, under the authority of which, the Provincial Legislature had met. On considering this part of the message, it opened the eyes of both parties; for these words being all English, unaccompanied by a translation, they found that the Governor would assent to the English version only: and that, if any change was to be made, it could not be effected by their Resolutions, but only by an Act of the whole Legislature.^a One circumstance may probably have caused some excitement among the French members on this occasion. The Governor had, unnecessarily and injudiciously, given English names to the greater part of the counties into which the Province was divided. Some of the names were difficult of pronounciation to the inhabitants, and one (Warwick) contains a letter not to be found in the French alphabet. Most of these names have since been changed, and several of the counties subdivided, by a late Provincial Act passed in 1829.

At the same time that General Clarke was giving English names to many counties, with the view, as may be presumed, of

^a Some of the arguments used on this occasion appear in the Quebec Magazine for January and February, 1793. This publication is now very scarce: it was not continued after 1794. For other arguments in favour of the French text, it refers to the Quebec Gazette of the 31st January and 7th February, 1793.

gradually anglifying the inhabitants, a mistaken policy of quite an opposite tendency existed in regard to the militia, at least in the cities of Quebec and Montreal. They were divided into *British* and *Canadian* militia, and the privates were obliged to enroll themselves accordingly. This distinction was in use when the Province was invaded, in 1775, by the revolted Colonies,^b and in full force when the writer arrived at Quebec in 1790: for, he well remembers to have heard mention made of some young Canadian lads who, not long before that date, had enrolled their names with British officers, which excited the jealousy of the Canadian officers, who complained and had them fined (10s. each, it is believed) for disobedience of orders. This was considered bad policy, as tending to alienate the affections of these young men from the British Government. The Militia was governed, in 1790, by Ordinances of the Governor and Council: however, since the Provincial Parliament was constituted, Acts have frequently been passed to regulate the Militia, but they have either been temporary or, if permanent, soon amended

^b In the second volume of Smith's History of Canada, an account is given of the siege of Quebec, by an officer of the garrison. He often speaks of British and Canadian (sometimes English and French) Militia: the former was the official distinction, as appears from the following statement of the force of the garrison, on the first of December, 1775.

70	Royal Fusileers,
230	Royal Emigrants,
22	of the Artillery, Fireworkers, &c.
330	British Militia,
543	Canadians,
400	Seamen,
50	Masters and Mates of Vessels,
35	Marines,
120	Artificers.

1800 men bearing arms.

The number of souls within the walls computed at five thousand.

In the Journal of the House of Assembly, second Session, first Parliament, 25th November, 1793, there is an official return of the Militia, where the distinction is also observed. The recapitulation of *Canadian Militia*, including all grades, absentees, infirm and exempted, amounts to 36,045, with 8617 Fusils. The recapitulation of *British Militia*, with the same details, is 1401, and no mention of Fusils.

or repealed and new enactments made, apparently by way of experiment. The invidious distinction of British and Canadian Militia continued until about 1802 or 1803, when it was abolished, in *name* at least, though in *practice* there were battalions kept up, the officers of which were generally natives of Britain and Ireland, or their descendants: and their men consisted of all those who were not French Canadians, and who were scattered over the whole town and suburbs. The acts of 1803 and 1812 also provided that the militia, in general, should be mustered or drilled on a Sunday or holiday; but that the Protestant battalions might be assembled on any other days.— This religious distinction and mistaken policy was, however, finally abandoned in *practice* as well as in *name*, in 1828: and since then every captain of the sedentary militia has a particular section or district assigned to him, and the whole of the militia-men residing therein compose his company. These details will not be thought too minute or unnecessary, when the importance of the subject is considered: and, it is still requisite for my purpose that the Militia Act of 1830 should be noticed, which, as usual, was only for a limited time. It required a certain qualification of fixed property in the officers or their fathers, according to their respective ranks; and, by a retrospective operation, revoked the commissions then held by officers not so qualified. Something of the kind, but not to the same extent, was introduced by a temporary act also during the government of the Duke of Richmond, to which he assented with great reluctance, as declared in his speech on proroguing the Legislature, the 24th April, 1819. The Act of 1830 deprived many officers of their commissions, at least in Quebec and Montreal; and now, within the last few months, since the insurrection broke out, the government has found it advisable and necessary to violate its own Statute Law, if I am not mistaken or misinformed, by employing officers not qualified according to law. A sort of supplementary Act was passed soon afterwards, to constitute courts for enquiring into or trying the qualifications of officers. Thus the governor assented to the complete restraint of his discretionary power and prerogative,

in appointing or retaining militia officers, however long and meritorious might have been their services.

It was about the same time that an act was passed, requiring a certain qualification in property for Justices of the Peace, which many persons thought should still be left to the discretion of the Governor as heretofore. More especially as no qualification is required in this Province for the legislators who frame those laws, which the former only assist in administering.

Another ill-judged and unfortunate measure, adopted by the British Ministry, was the surrender to the House of Assembly of the Crown duties, as they were called, by an Act of the Imperial Parliament (1 and 2 WILL. IV. c. 23) without any condition or security that a proper civil list would be provided; but trusting entirely to the liberal professions and sense of justice of the Provincial Legislature, in which the Ministry have been grievously disappointed. This act may be considered as the immediate cause of the judges and other civil officers of government being so long deprived of their salaries, without any complaints against them in the discharge of their duties; a circumstance which, I believe, is without a precedent in the British dominions.

The Governor and Legislative Council have frequently given way to the popular branch (contrary to their better judgment it may be supposed): witness several temporary acts that have been passed, exclusive of those called Money Bills, which the Council may reject but cannot amend. This system of temporary acts commenced, I think, about eighteen or twenty years ago, in the House of Assembly; and for some time afterwards, a new act was passed, separately, for each act that was to be continued; but, during the few last years, it has been customary to introduce a Bill into that House, which has sometimes passed into a law, "to continue for a limited time certain acts therein mentioned;" which, perhaps, included six, eight or more acts. It would seem as if this were considered an improvement suggested by experience; but it is not easy to imagine a system better calculated to produce confusion and uncertainty in our Provincial Statute Book.

The Legislative Council appear to have acted inconsistently,

on one occasion, at least, if not more; for, as I understand, they refused to pass a Supply Bill in the spring of 1824 and again in 1826, though they passed one similar to these two, if not exactly the same, in 1825. But, as their proceedings and debates are not regularly reported in the newspapers, their conduct is not so generally and publicly known, and does not attract equal attention with that of the other House.

Some of the leading members of the House of Assembly, with Speaker Papineau at their head, whenever the opportunity occurred of the House being in Committee, have been in the habit, for several years past, of censuring and declaiming against all the governors of the Province, generally, ever since its cession to Great Britain; and more particularly against Sir James Henry Craig and Lord Dalhousie, as having acted in an arbitrary and tyrannical manner. It is foreign to my purpose to discuss whether or not they acted judiciously in every instance; but it is proper to assert, contrary to these harangues, that neither of them acted illegally: for, when Sir James imprisoned several persons, the *habeas corpus* act was suspended, and under a warrant signed by three Executive Councillors, any suspected person might be arrested and kept in prison, without trial, during the continuance of the temporary suspension. As to the dismissal of militia officers by Lord Dalhousie, for which he has been so much censured, it was merely an exercise of the well known and undoubted prerogative of every Governor. It is very doubtful whether this Province has ever had any Governor superior to these distinguished men; and the chief reason for mentioning their names, is in order to notice the quite opposite policy of their immediate successors, in conformity, no doubt, with instructions from the Colonial Office: this could not well be considered otherwise by the public, than as an implied censure on their conduct, and does not appear to have had any beneficial or lasting effect on the feelings of those that were expected to be thereby conciliated. On the contrary, it seems to have encouraged the popular branch of the Legislature to increase its demands to such a length, that they were at last refused; then the majority went so far as to deny the paramount authority and power of the Imperial Parliament; not-

withstanding that every Bill which passes through their House acknowledges, in the preamble, that they are "constituted and assembled by virtue of and under the authority of," an Act of the British Parliament. I have adverted above to Acts of the Executive Government and the proceedings of the Legislative Council, in order to shew my reasons for believing that there has been sometimes mistaken policy in their conduct also; and shall in the sequel, have occasion to return to the same topic. The faults and backslidings of the Assembly are better known to the public; particularly of late, since the publication of the Reports of the Royal Commissioners of Enquiry; also from the able pamphlet published last winter, and ascribed to their Secretary, Mr. Elliott. The pamphlet is not at present in my possession, but, if my memory be correct, it contains some animadversions on the Assembly for not proceeding on the question of the Clergy Reserves, as recommended by message from the Governor. It is very probable, as has often happened, that the message was not treated with proper decorum and respect; but, as these Reserves are for the maintenance of "a Protestant Clergy," only, and a great majority of the members are Roman Catholics, it could scarcely be expected that they would dispose of the question in a satisfactory manner. It may rather be supposed, if we could know their thoughts, that they were not sorry to observe such difference of opinion, on this subject, between the two Protestant Churches of Great Britain. I do not remember that our House of Assembly, in their many lists of grievances, have ever complained of the lands reserved for a Protestant Clergy as such: though, in one of the Resolutions (No. 18) annexed to a petition from individuals to the King, and laid before the Special Committee of the House of Commons in 1828, there is a complaint of waste lands being granted in large portions or reserved by the Crown, but no mention of *Clergy Reserves*, "to the grievous burthen of the actual settlers, the hindrance of new settlers, and the obstruction of the general increase and prosperity of the Province."

These Reports of the Commissioners, and the pamphlet of their Secretary, relate chiefly to recent events; but, in order to understand more fully the state of the case, it is necessary to

refer to the proceedings of former years. The debates in the Assembly, at the first meeting of the Provincial Parliament, have already been noticed. It was several years afterwards, in February, 1810, that the Assembly made a voluntary offer to provide for the expenses of the Civil Government, in the course of that Session. The Governor, Sir James Henry Craig, at the same time that he consented to transmit their addresses to the Imperial Legislature, making the offer, must have foreseen something of what has since occurred in the conduct of the House of Assembly. For he took occasion to remark, that there was no precedent of the House of Commons having offered a grant of money to His Majesty, when no application had been previously made to them; and, also, that their offer was inefficient, without the assent and concurrence of the Legislative Council, and it does not appear that an application was ever made to them for their assent. It was at that time suspected and foreseen by others, besides Sir James, that the House had other objects in view than merely to relieve the Mother Country from the burthen of the Civil Government of the Province. The next proceeding of much moment, was the impeachment of the two chief Justices: the *articles of impeachment*, or *heads of accusation* (opinions were not agreed which was the most proper term) were submitted to the Prince Regent in Council. The decision, to the best of my recollection, was in substance, that some of the accusations were frivolous, the whole unsupported by evidence, and as to the most serious charge (against the Chief Justice of the Province for High Treason, by giving bad advice to the Governor) it could never be sustained; because, if the Governor acted improperly or illegally, he himself must answer for it, not his Councillors. This decision was not pleasing to the Assembly, and their proceedings thereupon induced the Administrator of the Government, Sir Gordon Drummond, to dissolve the Parliament in the Spring of 1816. Not long afterwards, the late Judge Foucher was also impeached; but as this is particularly noticed in the first Report of the Royal Commissioners, it is sufficient merely to mention it.

The offer made in 1810, to provide for payment of the Civil

List, was no more heard of until January, 1818, when Sir John Cope Sherbrooke, in his speech at the commencement of the Session, informed the Legislature that it was accepted; and from that time the financial difficulties of the Province may be said to have commenced. A few years after, when the Assembly found they could not appropriate the revenue, without the concurrence of the Council, they allowed certain temporary acts, some of them imposing duties on imports at Quebec, to expire: and, as Upper Canada was entitled to a share of these duties, loud complaints were of course made from thence. The Imperial Parliament in consequence, made certain enactments in the Canada Trade Act (3 Geo. IV. cap. 119) to revive these duties and also to restrain the Legislature of Lower Canada from exercising such a control in future. There was, however, no interference where Upper Canada was not interested; and the consequence has been, that during two years at different periods, no tolls could be collected from the Lachine Canal.— We must not omit a remarkable occurrence that took place in the spring of 1820. The Duke of Richmond died the preceding summer, and Sir Peregrine Maitland, Lieutenant Governor of Upper Canada, had received instructions to administer the Government and meet the Legislature of this Province, until the Duke's successor should arrive. Accordingly, he arrived from York early in February, dissolved the existing Parliament, and called a new one, to meet about the end of March or beginning of April. When the new House met, the Speaker was chosen and confirmed by Sir Peregrine, who made a speech to both Houses, as usual, and of course the business of legislation was expected to proceed. But, when the Assembly returned to their own Chamber, they soon came to the resolution, that they were incompetent to proceed to business. The reason assigned was, that there was no return from the County of Gaspé, so that there were only forty-nine, whereas the Constitutional Act required not less than fifty members. The day fixed for the return from Gaspé had been extended, by a Provincial Act, beyond the time allowed for the other parts of the Province; and whether the Governor acted legally or not, in convening the Parliament before the day fixed for the return of

the Writ for that County, was never satisfactorily ascertained, as they had declared themselves incompetent for business; though, if the Governor, or any of his officers, had done an illegal act, it was natural to expect that the popular branch would have made some exertions to prevent its recurrence. On the contrary, the fit of incompetency continued for twelve days or more, during which they could not, or would not, receive a message from the Council, but shut their door in the face of the messenger. Nobody can tell how long this fit might have continued, had not the accounts of the demise of the King (which was known at its commencement) been officially received by Sir Peregrine; which, as the law then stood, occasioned an immediate dissolution of the Provincial Parliament. We may have heard of Courts of Law, when their jurisdiction was objected to, admitting their incompetency to decide the case; but the novelty of a popular Assembly voluntarily *stultifying* itself, created very great surprise, and attracted much public attention. The House of Assembly, however, does not always act consistently nor follow precedents set by former Houses: for, at the general election in 1827, one member was returned for two places, and another died before the meeting of the Legislature, so that when the House met in November, it consisted of forty-eight members only; and, moreover, the Governor refused to confirm their choice of a Speaker. Yet, strange to tell, they insisted that they were *competent* and right or wrong, would proceed to the despatch of business: until the Governor sent to the lodging of the Speaker elect, a proclamation proroguing the Provincial Parliament. The later proceedings of our Legislature are already publicly known, as formerly mentioned; I shall, therefore, proceed to make some observations on our Constitutional Act, and other matters connected therewith. If we can trace our present evils to their source, it will be a great step towards applying the necessary and proper remedies.

In the first place, the division of the Province of Quebec was very injudicious, though the end thereby proposed was very necessary and desirable. Those who supported and those who opposed this measure, had the same objects in view. In the House of Commons (on the 8th April 1791) Mr Fox said "Of

all the points of the bill, that which struck him the most forcibly was, the division of the Province of Canada. It had been urged, that by such means we could separate the English and French inhabitants of the Province; that we could distinguish who were originally French, from those of English origin. But was this to be desired? Was it not rather to be avoided? Was it agreeable to general political expediency? The most desirable circumstance was, that the French and English inhabitants of Canada should unite and coalesce, as it were into one body; and that the different distinctions of the people might be extinguished for ever," &c. Mr Pitt, in answer said, "As to the division of the Province, it was in a great measure the fundamental part of the bill; and he had no scruple to declare, that he considered it as the most material and essential part of it.— He agreed with the right honorable gentleman in thinking it extremely desirable that the inhabitants of Canada should be united, and led universally to prefer the English Constitution and the English Laws. Dividing the Province he considered to be the most likely means to effect his purpose," &c. &c.

The House in Committee, 11th May, "Mr Hussey objected to the division of the Province, stated in the bill, a measure which he considered as not suited to the purposes of legislation. He thought they all would become British subjects sooner if the division did not take place. He considered it, instead of tending to heal their differences, as calculated to preserve and inflame their animosities. Commerce was the chief point of view in which Quebec was of importance to this country. It behoved the House, therefore, to provide for that most essential object, the security of property. We ought to introduce the English commercial law, and leave the House of Assembly to make such alterations as they should find rendered expedient by their own peculiar circumstances."

Mr Pitt again defended the division of the Province of Quebec. Mr Burke did not disapprove of it. Lord Sheffield and Mr Fox spoke against it; Sir John Sinclair made a motion to prevent it, which was negatived without a division.

It does not appear, nor have I been able to discover, that any petition or application had ever been made to Parliament

for the division of the Province of Quebec. Mr Lymburner, agent of the petitioners of this country for the Constitution, did not know of such an intention, until he saw the bill, when he raised his voice against several parts of it, more especially the division of the Province, which he characterized as a *violent measure*. He was the bearer of a petition numerously signed by the old and new subjects (which was then the usual distinction), inhabitants of what is now Lower Canada. It is dated at Quebec, the 24th November, 1784, in English and French, and was printed in London, 1791, with the subscribers' names to both versions. He was allowed to read a paper at the bar of the House of Commons, on the 23d March, 1791; and from his knowledge of the country, was enabled to state reasons against it, apparently unknown to the House and which were overlooked in the subsequent debates. It is well worthy of perusal at this period, and does great credit to the writer's judgment and foresight; a few short extracts, however, must suffice. "I cannot conceive what reasons have induced the proposition of this violent measure. I have not heard that it has been the object of general wish of the loyalists who are settled in the upper parts of the Province; and I can assure this Honorable House, that it has not been desired by the inhabitants of the lower parts of the country. I am confident this Honorable House will perceive the danger of adopting a plan which may have the most fatal consequences, while the apparent advantages which it offers to view are few, and of no great moment." In another place he states that articles for the upper parts of the country as well as exports from thence, must be landed and stored at Quebec or Montreal, and in passing through, must "become subject to the laws, regulations, duties, and taxes, which may be imposed by the legislature of the lower country." He then speaks of the revenue that will probably be raised by duties in this way for public purposes, and of the discontent that may be expected among the people inhabiting the Upper Government, when the revenue thus raised is not under their control or for their benefit; he then adds, it may be said with prophetic accuracy, what is now nearly, if not actually the state of the case. "It is impossible, Sir, if the

Province of Quebec is divided, for the wisdom of man to lay down a plan for these objects that will not afford matter of dispute, and create animosities between the governments of the two Provinces, which in a few years, may lead to the most serious consequences. This would be sowing the seeds of dissension and quarrels, which however easy it may be to raise, will be found extremely difficult to appease."

It appears, however, that Mr Pitt and the other Ministers of the Crown had previously formed the plan of dividing the Province of Quebec; and Mr Lymburner's remonstrance, as it may be termed, with the opinions afterwards expressed against it, in the debates that ensued, had no effect in changing that part of the bill. At present, I have not access to the proceedings in the House of Lords; but, if my memory does not deceive me, their Lordships passed it without amendment and with little, if any, debate.

In the next place, I come to say something of what may be termed the Ecclesiastical part of our Constitution, and the manner in which it has been administered, which has no doubt had a considerable effect in bringing about the present unfortunate state of these Provinces, particularly in Lower Canada. The subject would require a more able hand to treat it according to its importance; but, though sensible of my incapacity to do it justice, it must not, on that account, be passed over in silence. The Royal Commissioners of Enquiry have mentioned this matter incidentally only, though it seems they intended to make a separate Report thereon, including other matters: for, at the beginning of their General Report, they say "On the Clergy Reserves, and on some important petitions recently received on other matters, we shall submit our opinions hereafter." But, when the statement of Sir George Gipps, (dated 15th December, 1836,) was added to that Report, Sir Charles Grey had taken his departure for England; and Lord Gosford remained in Lower Canada until March, 1838: so that, they have not met since, to join in any Report. However, one or all of the Commissioners may have given their individual opinions to the Colonial Secretary; and it is very probable that Sir Charles has done so, as he seems duly impressed with the importance

and difficulty of the subject, which will appear from his statements annexed to different Reports. In the conclusion of that appended to the third Report, he says:—"From this description of the prospect I have made one exception, it is religion, an element which, in its volatile state, is beyond the control of governments, which is not at present in a state of greater action than is salutary, and possibly may not be inflamed, but which, if ever it should become so, whether by the oppression of the Protestant or the Catholic Church, will be the signal for general confusion." The following quotations are from the conclusion of the minute of Sir Charles, annexed to the General Report: "It is not without a due sense of the grave and momentous considerations which are connected with the task of altering a Constitution, that I say this; but if the Act of the 31 Geo. III. c. 31, be divested of its ecclesiastical provisions, it will be perceived that it is not of a very difficult or complex structure, yet might serve as a precedent for what would be now wanted." He then goes on to propose, "that Lower Canada be divided into several subordinate Legislatures, with one general and controlling one," &c. &c. After having mentioned different conflicting claims set up and urged by the French Canadians and by the British, he adds, what is very evident, "There are pretensions on either side which must be repressed." In a note added to this minute, Sir Charles says, "he had prepared notes on different points, that required only to be copied;" one point is, "institutions for religion and education." The whole of these notes, if published, could not fail to be useful and very interesting, at this particular juncture. These subordinate legislatures with a general one to control them, could not be considered an efficient remedy for the dissensions that have so long distracted the Province, as will probably be manifest on a little reflection. One of the pretensions that requires to be repressed, not particularly noticed by Sir Charles, and which is coeval with our Constitutional Act, or rather was revived about that time, is, the assertion brought forward as an axiom not to be controverted, that, *the Church of England is the Established Church in all the British dominions, Scotland only excepted.* The Legislatures of the Canadas, particularly that

of Upper Canada, appear generally, with but few exceptions, to have acted on this untenable assumption, which will be noticed more particularly afterwards. At first it was not publicly advanced, but was mentioned incidentally only, as occasions occurred; and, during the first twelve or fourteen years of my residence in this Province, from 1790 until about 1803 or 1804, I do not remember to have heard the term *Established Church* used, as applicable to this country. The claim, however, has been boldly and frequently asserted of late years, in both Houses of the Legislature of Upper Canada, and also in different publications there.

The disagreements and difficulties between the House of Assembly and the other two branches of the Legislature of Lower Canada, seem to have increased and taken a more serious and decided turn since the year 1820. It would appear, by a speech of Mr Speaker Papineau, at his election that Summer, that he had then no grievances to complain of; and that he was fully sensible of the privileges and advantages enjoyed by the Province, in consequence of its cession to Great Britain.^c The same Summer, it was announced, by an advertisement in the Official Gazette, that the Protestant Bishop and his Clergy, were erected into a corporation for managing the Clergy Reserves: and only about the same time, I believe, that the Royal Institution for the advancement of Learning was constituted, though the act empowering the Governor to do so was passed long before, in 1801. In 1822, a bill was brought into the House of Commons to reunite Upper and Lower Canada, which would probably have passed, had it not been opposed by Sir James Macintosh. When the details of the bill were known here, there was a decided and general opposition to the measure, by what are called the French Canadians. A public meeting was called and numerous attended at Montreal, by whom a most respectable committee was appointed, of thirteen or perhaps fifteen members, to prepare petitions and to use all lawful means to prevent the union. They had several objections to the details, but the strongest were against the ap-

^c This Speech has been republished since the insurrection broke out.

proval of the Governor, which was required before their Bishop could legally place his curates or priests, and also that their language was excluded from the Legislature, not only in the written proceedings, but, after fifteen years, also in debates.— These, and several other objections, were allowed to be well founded by Mr Wilmot Horton, in his evidence before the Canada Committee in 1828. When the Legislature met next winter, the Governor, in consequence of instructions he had received, recommended the consideration of the subject to both Houses. The members, generally, had previously made up their minds; and, in the Council six voted for and eight against the Union, as published in the newspapers at the time; for their journal does not show the majority, though the names of the minority appear to their reasons of dissent. In the Assembly it was voted down, I believe, without much debate, there being thirty-one against, and only three members in favour of it: the names of all appear in the Journal. It would perhaps have been more advisable not to object altogether to an Union, but only to such principles and details as appear objectionable; and for each House to have stated the manner in which they would approve of its being carried into effect. In Upper Canada, both Houses took up the question, though not particularly recommended to them; but, so far as my memory serves me, neither expressed itself very decisively either for or against the measure. Mr Papineau was one of the agents that carried petitions to London against the Union; and while he was there, a pamphlet was published in the form of a letter to the Earl of Liverpool by a member of Parliament. It related to the ecclesiastical and political affairs of the Province; and declaimed with much virulence against the Church of Rome; the Church of Scotland also came in for a share of censure; and complaints were made of the countenance and support afforded to both in this country. The author is not yet certainly known, perhaps more than one had a hand in it; but, if not written here, it is evident the materials were furnished from hence. It was not intended for circulation here; Mr Papineau, however, sent out a copy, which was handed about and freely discussed in the newspapers. All these circumstances occurring together, or

following one another closely, tended, no doubt, to create jealousy, suspicion, and distrust in the minds of many people, where such feelings did not previously exist.

— Another fruitful source of much bad feeling and party spirit must not pass unnoticed. It is the national distinctions and other irritating topics introduced into newspapers, or speeches made at public meetings, and reported afterwards in the papers. This licentiousness of the press has no doubt done much mischief on both sides for many years past; but more particularly at, and since the general election in 1827. The French Canadians, as they are called, have sometimes been mentioned as a conquered people, at other times represented as in general disloyal, &c. I have not regular files of newspapers to refer to, but any person residing in this country may have noticed it. However, I happen to have before me one number, dated 16th August, 1832, of the oldest and perhaps the most influential paper in this district, from which an extract follows, which may be reckoned a fair specimen of the publications alluded to.— The editor, after remarking on some very improper resolutions passed at a public meeting in a country village, concludes with the following threat:—“Let us no longer hear of our being only one-tenth,—by emigration alone, our population was increased, during the last six years, upwards of 23,000; the stream continues to flow towards us, and, despite of the *party*, we will continue to increase and multiply in the land, settle the soil, and introduce, in due course of time, our institutions, our language, and our laws.” It is easier to imagine than to express, what discontent and alarm such paragraphs must excite, when rendered into French, and widely circulated with editorial remarks, as has often been done, for the purpose of agitation.— The bad effects and injustice of such writings and national distinctions, are well set forth in an address, dated January, 1838, from 273 inhabitants of Longueuil to the Governor-in-Chief. The following is the passage alluded to: “The feverish and disturbed state from which the excited parts of this district are recovering, is attributable, not only to the disloyal writings, speeches, and meetings, which have attracted public notice as the immediate causes thereof—but, in no small degree

to the virulence and irritating language used by miscalled loyal papers, and to the haughty and arrogant conduct of men, who, pretending to exclusive loyalty, abuse without measurē all who are opposed to their narrow and selfish policy, thereby entertaining national distinctions, (than which, nothing is more foreign, to the notion of the Canadian people,) purposely keeping alive political prejudices, and exciting to disaffection, a people whose loyal conduct has at different epochs received the praises of your Excellency's predecessors, and of the Imperial Government."^d

These different causes, particularly the attempt, (if not real at least apparent,) to undermine or curtail the religious liberty of the Canadians, produced, as might have been expected, fears, distrust, discontent and not unfrequently opposition to the plans of government. An English gentleman, since deceased, who was a Roman Catholic and had resided in the Province since 1780, disapproved very much of that part of the Union bill which he considered as an improper interference with the functions of the Roman Catholic Bishop: though he had no community of political feelings with L. J. Papineau and his ad-

^d See the Montreal Morning Courier of 26th January, 1838.

It will not be considered out of place here, to give the opinion of John Neilson, Esq. regarding the French Canadians, which appears in his examination by the Commissioners of Enquiry, annexed to their first Report, page 61:

Q. 424.—“To what extent do you consider the French Canadians to be under the influence of the leaders, and to be an excitable people? I consider that they are quite excitable, but not for theories of government; anything that will insult them, or affect them in their feelings and interests, will stir them up very readily. The mass of them are not very much under the influence of their leaders. The truth is, that the best of the French Canadians will take very little part in the public affairs of the community: those affairs are in the hands of lawyers, doctors, notaries, surveyors, small traders, tavern-keepers and mechanics: many of the most respectable *habitans* take no interest in political transactions.”

Q. 425.—“Do you think that if there were some scheme to sever Canada from Great Britain, and it were discovered, the majority of the people would be prepared to assist in putting it down? I am clearly of opinion that they would. If the question advert to anything in the shape of a plot or treasonable conspiracy, or to anything to be carried by violence, or connexion with a foreign power, I am persuaded the people would gladly see it defeated.”

herents: for he remarked, that it was like putting arms into the hands of these factious men. He was also sorry, when the Bishop of his Church was called to the Legislative Council, about eighteen or twenty years ago, I think; because, as he said, it would occupy too much of his time and attention, which ought to be entirely devoted to his episcopal duties. His successors have not attended the Council; but whether they declined the honor, or that it was not offered to them, is unknown to me. In the journals, he is styled, "Rev. J. O. Plessis, Bishop of the Roman Catholic Church of Quebec;" the Protestant Bishop is styled, "Lord Bishop of Quebec:" a distinction that could not be very flattering to the former, nor to the numerous members of his Church. The same causes may likewise account for the leading men in the House of Assembly being long supported by their constituents, among whom are many intelligent, as well as conscientious men; perhaps they may have been encouraged even by some of their clergymen; but that cannot be easily ascertained, as they do not openly interfere in politics, except on some very urgent occasion. As soon, however, as it became evident that, under the specious name of *Reform*, these men aimed at revolution, denying the paramount authority of the British Parliament, and seeking to dismember the Canadas from the Empire, then it was, that the well disposed Canadian gentlemen, and the Catholic Clergy of the District of Montreal, (for many years the head quarters of agitation,) came forward to stem the torrent, and if possible, to restore peace and obedience to the laws. The Rev. John James Lartique, Catholic Bishop of Montreal, issued a pastoral letter, dated the 24th October, 1837, to be read in all the Churches of his Diocese.^e This was of course done, and his views were generally seconded by the clergymen under him; which, there can be no doubt, had a powerful effect in preventing the insurrection from becoming general over the whole District. He describes in a strong and feeling manner, the horrors of civil war; which, thank God, were only partially experienced, yet

^e See Appendix, No. I.

enough was realized on the banks of the Richelieu and at St. Eustache, to verify his description.

It has just been stated that religious scruples and conscientious feelings must have had a large share in bringing about the present unfortunate state of affairs in this Province. It is not, however, to be inferred from this, that the leaders in the late insurrection were either religious fanatics or sober serious Christians, attached to the services and worship of the respective churches to which their ancestors adhered; though there can be no doubt that many of them, for several years before, had, by wearing the mask of religion, taken advantage of the alarms on that score, which were felt by many of their more conscientious countrymen, to excite discontent and resistance to the government and laws. On the contrary, when they were about to break out into open rebellion, they treated their clergymen, and Bishop Lartique's pastoral letter with contempt, and in several parishes many of them left the churches when their Priests began to read it. Indeed, they seemed disposed, had they not been timeously checked, to follow the example of the French Revolutionists of last century; and it has been stated, (but I have seen none of his papers for several years) that Mackenzie, the arch-rebel of Upper Canada, recently published part of the treasonable and blasphemous writings of Tom Paine.

It has been stated and may be credited, that many of the country people, or *habitans*, were promised, as an inducement to take up arms, that *la dime*, or tithe payable to their Priests, would be abolished, as well as the rents due to the Seigneurs, without their having to give any indemnification to either. Robert Nelson, in his declaration, as *President of the Provisional Government*, promises a discharge for all arrearages due in virtue of any Seigniorial rights, real or supposed, as an allurement to all who shall bear arms, or otherwise assist in this contest for emancipation. Perhaps he declined speaking of the dues payable to the Priests, lest he might shock the religious prejudices, as he would say, of the farmers and others, whose assistance he hoped to obtain. This declaration, without date of time or place, it appears, was printed in Vermont, and intended to be

dated and circulated so soon as he got a footing in the Province: but, by some bad luck, it got into circulation about the first of March, 1838, before he had any hold of Canada.

It is truly said, in a late provincial publication, that "an abundant source of error, as to all Colonial affairs is, too servile a reference to the proceedings of the government in England, as a model, without bearing in mind the marked difference which exists between the society there and here," &c. It may be attributed to this source, that the Protestant Bishop of Quebec was called to the Executive and Legislative Councils of both the Canadas, and as Executive Councillor, he is also, *ex officio*, a Judge in the Court of Appeals; he has likewise other offices assigned to him. I believe he has never taken his seat in either Council in Upper Canada; but that of course depended merely on his own pleasure. To the same source may, probably, also be traced the assent given in 1830, to the bill requiring a qualification for officers of militia; which, as I am informed, is the uniform practice, if not the law, in England; perhaps also in Scotland and Ireland. On the other hand, the House of Assembly has laid claim to the absolute control of all the money raised in the Province, far beyond the claims and privileges of the House of Commons. Money bills originate in the Assembly, a privilege that has never been denied to it. They also claim the right to stop the supplies of money, as being one of the privileges of the British House of Commons. A privilege, however, which is seldom exercised; and if it ever should, there can be no similarity between the effects there and in the Canadas. There, the practice is to settle and appropriate by an Act of Parliament at the commencement of each reign, the amount of annual supply that may be required to carry on the civil government during that reign: but, depending on an annual act for other grants that may be required for the public service. Thus, the privilege and right of the Commons is confined principally to withholding or curtailing the supplies that may be asked, for keeping up or augmenting the army and navy; with the view entertained, perhaps, by the ministers of the Crown, of establishing an arbitrary government; or of carrying into effect ambitious schemes of foreign

conquests, which might prove injurious, in the highest degree, to the commerce and prosperity of the Empire. The case of the Canadas and other Colonies who pay their civil officers only, but contribute nothing, directly, to their defence; is so very different and has been so fully exemplified of late in this Province, that is sufficient merely to have mentioned it.

Our Assembly have eagerly adopted and applied to themselves an insufficient reason that has sometimes been given for this "antient indisputable privilege and right of the House of Commons." A privilege so ancient, that the record of its date and true reason of its first adoption, appear to be lost or uncertain. "The general reason given for this exclusive privilege of the House of Commons, is, that the supplies are raised upon the body of the people, and therefore it is proper that they alone should have the right of taxing themselves. This reason would be unanswerable, if the Commons taxed none but themselves: but it is notorious, that a very large share of property is in the possession of the House of Lords; that this property is equally taxable, and taxed, as the property of the Commons; and therefore the Commons not being the *sole* persons taxed, this cannot be the reason of their having the *sole* right of raising and modelling the supply. The true reason, arising from the spirit of our constitution, seems to be this: the Lords being a permanent hereditary body, created at pleasure by the King, are supposed more liable to be influenced by the crown, and when once influenced to continue so, than the Commons, who are a temporary elective body, freely nominated by the people. It would, therefore, be extremely dangerous, to give them any power of framing new taxes for the subject: it is sufficient, that they have a power of rejecting, if they think the Commons too lavish or improvident in their grants." But the House of Assembly of Lower Canada have carried their pretensions and claims much farther; for they seem to have expected that money bills passed by them, ought to be sanctioned by the other two branches of the Legislature, notwithstanding whatever conditions were *tacked* to them. This disposition was first pub-

lily shown in the addresses of 1810, which, as already stated, Sir James Craig did not fail to notice.

Having pointed out the principal causes of the discontent and difficulties that have existed for many years in this Province, and that have also occurred between the Upper and Lower Provinces, I shall now propose, what appears the best, if not the only remedies that can be applied. And first, as being the greatest, the Canadas ought to be re-united. But before speaking of the details, it will be proper to notice some other schemes that have been thought of, as remedies for the evils arising from their having been separated. The chief plan, is to annex Montreal and another portion of this Province to Upper Canada, so as to give it a port of entry and clearance for vessels from sea. This was first talked of ten years ago or more; and many speeches and writings have since appeared in its favour, especially in the Upper Province. But, in that case, the same details would be necessary, and the same difficulties must be overcome, as in uniting the two Provinces. And, after all, it would not prove a remedy to the existing difficulty regarding the public revenue. It is well known to every one acquainted with the commercial business of Montreal, that the chief part of the goods imported are opened there, and afterwards sold to merchants and shopkeepers there, and in other parts of that extensive district; part also goes to the district of Three-Rivers, and occasionally to the city of Quebec, when any articles there, bear better prices than in Montreal: a great part of the imports there, also go to Upper Canada, for I believe not one half of the goods, liquors, and groceries consumed there are imported in separate packages and for account of the merchants residing in that Province; but, that they purchase their chief supplies from the importers at Montreal, and, such is now the facility of carriage by steamboats, that they sometimes make purchases in Quebec. It is thus evident that, if Upper Canada collected the duties levied at Montreal, the same difficulty of giving to each Province its just and equitable proportion, would still exist: the only difference being, that Lower Canada would then have to apply for her share to Upper Canada.

In perusing the Reports of the Royal Commissioners of En-

quiry, we are disappointed in not meeting with any decided opinion on this point; though they seem rather to discourage than recommend the Union. In the Second Report, paragraph 17, they think the question ought not to be entertained, "except with a very general prevalence of opinion in its favour in both Provinces." On this it may be remarked, that there are many persons in its favour in both Provinces; and also not a few against it, especially in Lower Canada. But, as to the *general* opinion in either Province, it cannot easily be ascertained.—For, there is not perhaps one in five hundred, who is able and will also take the necessary trouble to form an opinion of his own; though many will sign, without reading, a petition either for or against it, as the case may be, on the strength of some favourite name that precedes their own.

The General Report of the Commissioners, (section VI, paragraphs 6, 7, 8, 9,) details the difficulties arising from the apportionment of duties, and from certain clauses of the Canada Trade Act, 3, Geo. IV., c. 119: they then express the "wish that each Province could be enabled to raise and regulate its own revenue;" but they have not heard any good suggestion, neither have they any of their own to offer, as a remedy for these evils; therefore, "the necessity of the present arrangement justifies its continuance," &c. Sir Charles Grey added a minute to this Report, at the end of which, in a note, he speaks of certain notes that he had made on different subjects, one of which is the Union of the two Provinces; but, if these notes were given into the Colonial Secretary, they have not been published, so that his opinions on these points are not known.—There is also a statement from Sir George Gipps added to the same Report in which, under the head of "Changes in the Constitution of the Province," there is a suggestion, that, instead of giving Montreal to Upper Canada, it might be declared "an absolutely free trading port," &c. &c. He has not explained fully, and without explanation, it is not easy to comprehend how his suggestion could be carried into effect, in such a manner as to afford a remedy for these increasing difficulties.—As to the wish that each Province may be enabled to raise and regulate its own revenue, a slight consideration of the trade car-

ried on between them, which centres chiefly in Montreal, and for timber, partly in Quebec, added to their geographical position, will clearly shew that it is utterly impracticable; as was foretold, in the quotation already given from Mr Lymburner's paper. It is proper to notice, more particularly, the opinion of Sir Charles Grey, expressed in the conclusion of his minute annexed to the General Report. He there refers to what the minister of the day, Mr Pitt, stated, in debate, the 11th May, 1791, as his reasons for dividing the Province of Quebec; and supposes that, if the division had not taken place, we would now see, "the whole inhabitants of the old Province of Quebec arranged in two parties, of nearly equal numbers, and perilously opposed to each other." He then goes on to explain his scheme of obviating the present difficulties and party differences; and suggests that our Constitutional Act, if "divested of its ecclesiastical provisions," might serve as a precedent for what would now be wanted. Then he proposes that Lower Canada may "be divided into several subordinate Legislatures, with one general and controlling one." This plan is much too complicated and difficult of execution to answer well in practice. Sir G. Gipps, near the end of his remarks upon Sir C. Grey's paper, hints also at a Federal Union of all British America; and it has been said that such a scheme was recommended by some persons in 1823, in place of the Incorporating Union of the two Provinces, the last of which was then much discussed. This scheme is also too complex; and both appear to be imitations of the Federal Union of the United States, which does not seem to answer very well there, and would be still more unsuitable under a Monarchical Government. The Legislative Council of Upper Canada, in a Report on the state of the Province in February, 1838, speak of the Federal Union of British North America, and of the annexation of Montreal to their Province, with apparent complacency and approbation. But none of these schemes includes any feasible plan for remedying or removing the existing financial difficulties between the two Provinces. With respect to what might have been the present state of the Province of Quebec, had it remained entire, it is difficult to say, as it was not tried; but it is hardly possible, it

could have been in a worse condition than are the Canadas just now, hoping soon to recover from the effects of an insurrection, that lately broke out in both, at a time when the Mother Country had no foreign enemies. It must be borne in mind, as has been adverted to already, that several members of the House of Commons condemned the policy of dividing the Province, as did Mr Lymburner, who entered more into detail and predicted the difficulties relating to the public revenue, just as they have occurred and do still exist. Yet, such is the veneration for great and eminent men, like Mr Pitt, that even their mistakes and errors, from which none can claim exemption, are more dangerous than those of ordinary men, being frequently followed and held sacred; which is the only way of accounting for the opinion of Sir C. Grey, abovementioned, contrary to what was so clearly foreseen and is now confirmed by experience.

In proposing the re-union of the Canadas, I am well aware of the details and difficulties that must attend it, and the prudence and caution that must be observed in effecting it; arising from the different origins, languages, manners, customs, laws and religions of the inhabitants; yet it is the best, or rather the only means, of removing the existing evils and preventing their return. The mode adopted in uniting England and Scotland, may, with some variation, serve as a precedent. Let Commissioners be appointed by the British Government or by the parties, as may be considered most advisable, on behalf of each Province; with instructions to draw up articles of an Incorporating (not a Federal) Union, or a constitution for the Provinces when united, on some general plan to be suggested to them; in which neither Province is to have any advantage or preference real or apparent over the other; unless the good of the whole Empire or the stipulations of the treaty of 1763 require it. The *written* daily proceedings of the United Legislature, to be entered on their journals, should be in English only; but, a French translation of the most important parts might be printed at the public expense, after each session, for the use of members, &c. One English translator, if not more, would also be constantly required for some years, to render motions, reports of committees, &c. into that language. The acts should be printed

together in English only, being the original or text: and an authorized translation would be required, separately, for the use of those entitled to copies of the laws, and who do not understand English; with some extra copies for sale at the same price as the original text. The debates and proceedings will be translated in the daily papers, as heretofore, for the information of their subscribers and the public. The provision in the Bill of 1822, requiring the debates to be also in English, at the end of fifteen years, was very ill-judged and could not easily have been enforced; in fact, it looked like an infringement on the liberty of speech, and may be called *over legislating*: for, if the practice be adopted of using only English, in the *written* daily proceedings, it will follow in time as a matter of course, that the debates will also be in that language. There are other reasons in favour of using only English in the daily proceedings; however, I shall notice only the great saving of precious time, a matter of considerable importance, especially when the representatives are paid, as at present, for their attendance. Neither ought the electors to complain nor think it a hard case; for, as I understand, there are many electors, in Ireland, Scotland and Wales, who do not understand English, and still more who cannot speak it; yet, in the debates and proceedings of the Imperial Parliament, nothing is used but English, though perhaps not always quite pure; and the acts are printed in that language, without giving any translations.

The English ought also to be used as much as possible in the Courts of Law, which, it is believed is already the case, when it can be done without impeding the course of justice. This, however, must be left to the judges and gentlemen of the bar, as being most competent to decide on what changes, if any, are proper to be made in that respect. The laws in many respects require also to be amended, and something may probably be effected in that respect in this Province, even before the Union takes place, by the intervention of the Imperial Parliament; our own Provincial Legislature being suspended, in consequence of the popular branch having committed political suicide. It is gratifying to observe that "the Loyal Canadian Association of Montreal," in a declaration dated first of February, 1838, ad-

mits, that many amendments and improvements are required in the laws of the Province, which the members will labour to effect.⁶ But, they are strenuously opposed to the Union of the Canadas: that opposition will doubtless be diminished or vanish altogether, should the following scheme and suggestions be adopted. The principal and most difficult part of which, is, to secure to the Roman Catholic Clergy their present support, even when lands in the country parishes come into the possession of those who do not belong to their communion. In order to do this effectually and to avoid future mischief and difficulties, it will be requisite to appoint Commissioners in every county, or to ascertain by some means, what quantity of grain, &c. each farm in every parish, has contributed towards the support of the Priest for the last three years, or any greater or less number that may be considered necessary. Then the *lands* to be made liable to the Priest of the parish for the average quantity of these years, to be paid annually in *kind* by the owner or occupier of the farm, no matter to what church he may belong. This is a more equitable and secure maintenance for the clergyman than tithes, or a certain proportion of each year's crop, or than a fixed annual allowance in money, the value of which is so liable to fluctuation. Besides, a proportion of the yearly crop would only increase the present evil, by operating as a tax on industry, and bringing the inhabitants of the parish, especially those not of his church, into collision with the Priest. But, by the proposed plan, any person leasing or purchasing a farm could know exactly what he had to furnish yearly to the Priest and would make his bargain accordingly. Something similar to this was effected in Scotland about two hundred years ago; and improvements have been made in the present century, by the Acts, 48 Geo. III. c. 138, and 50th year same reign, c. 84; so that the Clergy of Scotland are now enabled to receive their teinds in money, the grain being valued at the annual current price. It is no doubt chiefly owing to these judicious laws and arrangements, that we scarcely ever hear of complaints by Roman Catholics and other Dissenters in Scotland, against the payment

⁶ See Appendix, No. II.

of teinds to the Scottish Clergy. On the contrary, there appears to exist more cordiality there, between different denominations of Christians, than in other parts of the United Kingdom. As an illustration and confirmation of this, I may refer to Wellwood's *Life of Erskine*, published in 1818. He gives a letter to Dr Erskine, from the celebrated Mr Burke, dated in June, 1779: and after making some observations on the state of public feeling at that period, which produced serious disturbances in Scotland, and the terrible riot in London, in 1780, Sir H. M. Wellwood then speaks of the contrast at the time he was writing, twenty years ago. The following passage is selected from his remarks on that head, page 311. "Since that time the disabilities, which affected the Catholics, with regard to their property, have been, in a great measure, removed, without having created any opposition, or excited any discontent or alarm; and even the right of presenting to a church benefice in Scotland, has not been withheld from a Catholic patron." As to what is called the *voluntary system*, which has made some noise for a few years in Scotland, it may be considered as a temporary clamour, and, by being properly met and treated, it may be soon expected to subside. It may also be taken into consideration, in examining the details of the proposed measure, whether some provision might not be made for the support of Roman Catholic Priests in the unconceded parts of Seignuries, or in other places, where Catholic subjects might wish to settle. The want of something of that kind, appears to be one great reason which prevents them from leaving their native parishes and forming new settlements.

It is not improbable that some of both clergy and laity of the two Protestant Churches of Great Britain, will exclaim against the whole of this plan, and insist that a Protestant Government ought not to cherish and perpetuate *superstition and idolatry!* Without attempting either to expose or palliate the errors of the Church of Rome, which must be left to those properly qualified by education and study, I shall merely observe that she agrees with us in the great essential truths of Christianity, as contained in the Apostles' creed; the Lord's prayer is also the same in their catechism; but the ten commandments differ somewhat,

though they are not absolutely contradictory to our translation. A gentleman of that Church, lately deceased, used to say "that they believed all we did, and a good deal more." The same thing is also noticed in the memoirs of the great Sully, for the year 1604, as may be seen in a translation, printed at Edinburgh, in 1773: the original work I have not met with.

It must not be forgotten, also, that all the efforts hitherto made to convert the Roman Catholics of Lower Canada, have signally failed of success; and it may now be considered hopeless, unless some new and more efficacious scheme be devised for that purpose. It was generally believed, and is now evident that the Royal Institution for the advancement of Learning was expected to be the means of bringing up many of the rising generation to the English Church; which may be inferred, independently of its subsequent policy, from the members being selected chiefly from that church, with the Bishop as Principal:^a but the measure did little more than creating jealousies, without attaining the chief object in view. But farther, the act of 1774, and our Constitutional Act, in 1791, provided that the Roman Catholic Clergy should enjoy all their rights, dues, &c. "with respect to such persons only as profess the said religion." It is farther enacted, that Protestants shall pay tithes, so as to form a fund for the maintenance of a Protestant Clergy; but tithes have never been collected from Protestant proprietors of farms, and cannot now be collected, after this enactment has remained so long a dead letter. So that in practice, though not by the letter of the law, whenever a cultivated farm in a Roman Catholic parish is sold to a Protestant, which is frequently the case, the Priest loses his tithe or dues, and the purchaser pays none. This will sufficiently account for the great aversion manifested by the French Canadians to the settlement among them, of emigrants from the British Isles, many of whom are Protestants; particularly when they are threatened with the extinction of their institutions, language and laws. It may be observed that, *institutions* being a general term, may perhaps be

^a See Neilson's Quebec Almanack: I have not a regular series to consult, but that for 1822 is sufficient.

understood to include even the Seminaries of learning where their Priests are educated. It deserves to be particularly noticed, as an important fact, that, since Protestants pay no tithes, a pecuniary temptation or premium is thereby held out for Roman Catholic farmers to join either of the Protestant Churches, or some of the Dissenters from them; yet we have not heard of a single convert being made from among the farmers, whether French Canadians or Roman Catholic emigrants from the old country, considerable numbers of whom must have settled in this Province, especially within the last twenty-five years.

It thus appears that, notwithstanding this accidental inducement, and all the means used since the cession of the country, yet the conversion of the inhabitants to the English Church has made no progress; but they are attached, as much as ever, to the Church of Rome. Is it not, therefore, the best policy to make no further exertions to prevent it; but, rather to give them more facility to educate young men for their church, and to support them in a respectable manner after they are ordained. But there is yet a stronger reason than the good policy of the measure; it is a stipulation in the treaty by which Canada was ceded to the crown of Great Britain. The following extract from the fourth article, which is placed at the beginning of our Provincial Statute Book, contains all that relates to this matter in the treaty. "His Britannic Majesty, on his side, agrees to grant the liberty of the Catholic religion to the inhabitants of Canada: he will consequently give the most effectual orders, that his new Roman Catholic subjects may profess the worship of their religion, according to the rites of the Romish Church, as far as the laws of Great Britain permit."

The British Parliament, in the Act, (14, Geo. III. c. 83,) framed an oath of allegiance expressly for the new Canadian subjects who might be appointed to certain offices; which is again enacted, with some additional words, in the Constitutional Act, (31, Geo. III. c. 31). So that the only thing of much moment then remaining, not permitted by the laws of Great Britain, was the Ecclesiastical and, in some cases perhaps, temporal jurisdiction usurped or assumed by the Roman Pontiff;

which is prohibited by the Statute, 1, El. ch. I. This difficulty appears to have been amicably arranged to the satisfaction of both parties; for no complaints arising therefrom, have ever been heard publicly from either side. And, as this relates chiefly, if not entirely, to the Royal prerogative; if the Sovereign and Privy Councillors are satisfied, surely no others have a right to complain, and least of all the Protestant subjects of a distant Colony like Canada.

I have not hesitated to recommend the use of the English language only, in all the written daily proceedings of the Legislature, and also in the Courts of Justice, when not incompatible with the ends for which these courts are constituted. Because, it is only from an indulgence, if not a mistaken policy, of the Executive Government, that this did not take place before.—The former laws were also continued, or rather resumed after being laid aside for ten years, by the Act of 1774; and, as neither their laws nor language were guaranteed at the cession of the country, there ought to be no hesitation on one side, nor complaint on the other, in consequence of the changes that are so much required for the public good. But it is quite different in regard to their religion, which is secured to them by treaty; and it would be ungenerous as well as unjust, in a powerful nation like Great Britain not to observe it religiously towards a weak colony like this. It must not be merely a toleration, as contended for in the letter to Lord Liverpool already referred to, but the free and secure exercise of their religion, with all its rites and ceremonies. And, if this be secured to the French Canadians, as they are frequently called, in such a manner as to be unalterable by the United Legislature of the two Provinces; there can be little doubt that it would reconcile them to the Union, with the necessary changes in the laws of Lower Canada, and to the disuse of their language, as abovementioned. Perhaps, even to the Governor's approbation being required, of the Priest or *Curé*, which their Bishop is about to place in a vacant parish.

It is not, however, desirable by any means, that their language should fall into disuse or be discouraged more than is absolutely necessary. For, there can be no doubt that, with the

free exercise and security of their religion, and the use of their language (which it would be impolitic and is impossible to abolish entirely) they will form the strongest bulwark against the flood of infidelity on the one hand, and of religious fanaticism on the other, with which we are endangered by unprincipled adventurers from the old country, and more especially from among our southern neighbours. The Canadian priesthood and intelligent laymen, have, for a long time, been well aware and duly sensible of the many advantages they enjoy under the Monarchical Government of Britain, compared with what they might expect, were the United States to become masters of this country. The atrocious calumnies, widely circulated and believed by many, against their Nuns and Priests in the name of *Maria Monk*; together with the total destruction of a nunnery near Boston by a frantic mob, for which the State could not or would not grant any compensation, have very recently exhibited the contrast in strong colours. The Priests, from the influence they possess over their flocks, have, generally, been always a strong support to the British Government in this Province. At the siege of Quebec, in 1775-76; during the progress of the sanguinary French Revolution, when exertions were made to *revolutionize* this country; also in the war with the United States, begun in 1812;¹ and, lastly, the late insurrection in the District of Montreal would undoubtedly have been much more extensive and alarming, had the Priests not exerted themselves to prevent it.

For these reasons, and for the benefit of the inhabitants of Montreal generally, it may be hoped the Government will be induced without delay, to settle the existing difficulties with the Saint Sulpicians, as Seigneurs of the island, in conformity with their offer and with the recommendation of the Royal Commissioners of Enquiry.

The laws of Great Britain, relating to ecclesiastical affairs, have never been generally extended to the Colonies, though in some cases they have. But they are much mitigated and relaxed of late years, particularly since the Catholic Emancipation

¹ See Appendix, No. III.

Bill passed into a law (10, Geo. IV. c. 7.). The supreme Legislature of the Empire having wisely and liberally followed up the suggestion and recommendation of Sir W. Blackstone, in 1765. After stating various penal and disabling enactments made at different times against the papists, he adds, "But if a time should ever arrive, and perhaps it is not very distant, when all fears of a Pretender shall have vanished, and the power of the Pope shall become feeble, ridiculous, and despicable, not only in England but in every kingdom of Europe, it probably would not then be amiss to review and soften these rigorous edicts; at least till the *civil* principles of the Roman Catholics called again upon the Legislature to renew them: for it ought not to be left in the breast of every merciless bigot, to drag down the vengeance of these occasional laws, upon inoffensive, though mistaken subjects, in opposition to the lenient inclinations of the civil magistrate, and to the destruction of every principle of toleration and religious liberty."^k

Before quitting this part of the subject, I must endeavour to obviate and remove an objection or opinion started by Mr Quesnel, advocate, which is plausible and may perhaps appear just to many others, besides him. In the Appendix to the Fifth Report of the Commissioners of Enquiry, page 180, his examination by them is given. Regarding the property held by the Seminary of Montreal, the question is put, "Have you formed any opinion on the right to that property? I have. The Law of Nations materially influences the question. A capitulation must be held sacred, as the expression of the conditions on which a nation or a province is surrendered. In Canada, in the capitulation of 1760, it is stipulated, that the religious communities shall hold their property, moveables, seigneuries, &c. &c.; and this was granted. The subsequent treaty of peace, in 1763, contained nothing to alter the capitulation; but, on the contrary, by its silence, acquiesced in that agreement. How the Imperial Legislature afterwards, in 1774, in recognizing the laws and property of the country, made an exception of the *religious communities*, is to me inexplicable. The law is strong,

^k Commentaries, vol. iv. page 57.

and I suppose we must defer to it; but I cannot feel that by that Act, passed so long after the solemn capitulation, which had been tacitly confirmed by the succeeding treaty of peace, the Seminary could justly be deprived of its property."

At first sight there appears a discrepancy between some articles of the capitulation and the treaty of peace; but not between the latter and the Act of 1774. However, after looking more attentively into the treaty and capitulation, the difficulty of reconciling them will disappear. In the capitulation of Quebec the preceding year, the sixth article asks for protection of the communities and the exercise of the Roman religion, &c. more in detail; but only "until the possession of Canada shall be decided by a treaty between their most Christian and Britannic Majesties:" which was granted. The thirteenth article of the capitulation signed at Montreal, asks certain conditions in case news of peace should arrive and Canada remain to the King of France, before the embarkation of the Marquis of Vaudreuil, &c. The answer was, "whatever the King may have done on this subject, shall be obeyed." The demand in article twenty-seventh, was granted in part; the rest was to depend on the King's pleasure. The demand in the thirtieth article, which was refused, was made on the supposition of Canada remaining in possession of the Crown of Great Britain. On the other hand the treaty also contains some restrictions and provisions, not to be found in the capitulation: such as granting to those that wished to leave Canada, eighteen months to dispose of their property, &c. and restricting the sale of their estates, to be made only to British subjects; likewise, in granting the liberty of the Catholic religion, &c. it was to be done, "as far as the laws of Great Britain permit." It must be well attended to, that some of the articles of capitulation were to be in force only until the conclusion of a definitive treaty, that others regarding the prisoners, &c. were executed without delay; and that those who negotiated them were not specially appointed for that purpose, and cannot be supposed much conversant in such matters: whereas, the definitive treaty was concluded by able negociators, who had full powers from their respective Sovereigns expressly for the purpose; and contains no mention nor allusion to any

capitulations, though the preliminaries of peace, signed 3d November, are referred to. From all these considerations and reasons, we come irresistibly to the conclusion, that, where the treaty does not refer to, and confirm the capitulation in any particular, the latter, in place of being acquiesced in, is superseded by the former, which is subsequent thereto, and of a nature much more formal and solemn. Moreover, the definitive treaty of 1763, cedes to Great Britain, Mobile and other territories on the left side of the Mississippi; and likewise, by the ninth article cedes the islands of Grenada and the Grenadines. It does not appear whether or not any capitulations had been entered into for these places; but these cessions, in both the 7th and 9th articles, are made, "with the same stipulations in favour of the inhabitants of this colony, inserted in the fourth article for those of Canada." But farther, the King of Spain was also a party to that treaty, and in consequence of conquests made in the Island of Cuba being restored to him, he cedes to Great Britain, by the 20th article, "Florida, with Fort St. Augustin," &c. Now, in the capitulation of the Havannah, by articles 6, 7, and 8, much more detailed and full freedom and scope were granted to the religion of the inhabitants than to those of Canada by the capitulation of Montreal; and it might be supposed that his Catholic Majesty would have claimed the same for the inhabitants of Florida, as had been granted in the capitulation of the Havannah; but the words, though not precisely the same, are of the same import as in the 4th article: to wit, "His Britannic Majesty agrees, on his side, to grant to the inhabitants of the countries, above ceded, the liberty of the Catholic religion, he will consequently give the most express and the most effectual orders, that his new Roman Catholic subjects may profess the worship of their religion, according to the rites of the Romish Church, as far as the laws of Great Britain permit."¹ Some persons may perhaps think, that more has been said than is necessary on this point; but it is an object

¹ The capitulations of Montreal and of the Havannah, with the definitive treaty of 1763, may be seen in the Annual Register for the years 1760 and 1762.

of much importance, to vindicate the British Parliament, when it can so easily be done, against the insinuation of having passed an Act contrary to the stipulations of a solemn treaty. It may, however, be observed, that "the liberty of the Catholic religion" could not well be enjoyed, were the King to deprive the inhabitants, by a suit at law, of one of their principal institutions for the education of young men for their church. In this matter, the Government seems to have acted upon the noble maxim of King John of France, "though good faith were banished from the rest of the earth, she ought still to retain her habitation in the breasts of princes."^m As the salic law does not obtain in the British dominions, we may add, *and princesses*. Accordingly, the evils attending the exaction of *lods et ventes* in the City of Montreal, have not been sought to be removed otherwise than by amicable negociations with the Priests of the Montreal Seminary, notwithstanding all that has been urged by individuals, in favour of a different mode of proceeding. By this amicable method we may hope soon to see the object finally accomplished, to the satisfaction of all parties.

There are difficulties now in effecting the re-union of the Canadas that did not exist when the attempt was formerly made; the following may be mentioned, as being the most considerable. The criminal law at that time was nearly the same in both Provinces, no very material changes having been made it is believed in either, upon the criminal law of England as it stood in 1774, when it was introduced, by Act of Parliament, into the Province of Quebec. In this Province not many alterations have yet been made; whereas in the sister Province, by following the example of the Imperial Parliament, in which Sir Robert Peel's labours were conspicuous, the Provincial Legislature, within a few years, has very much changed and mitigated the criminal code, especially by the Act third of Will. IV. c. 4. This circumstance, added to the great difference between their other laws, suggests the expediency and necessity of having different Judges after the Union, for those parts that are now distinct Provinces; at least until their laws become more

^m Hume's History, Edward III. A. D. 1363.

assimilated, if such should ever be the case. The Judges for the part now forming Lower Canada, ought, as at present, to understand, and be able to speak from the Bench, both English and French.

There is another matter that will require serious deliberation and perhaps occasion some difficulty before it can be satisfactorily adjusted. Lower Canada is free from debt: whereas the public debt of Upper Canada has been increasing for several years and is now very considerable. At a conference between the two Houses in February, 1838, the members attending on behalf of the Council, stated, as the chief reason for not passing several money bills, "that the debt of the Province already amounts to more than one million currency." It is proper here to notice an unusual proceeding, which, so far as my information goes, is without a single precedent. The House of Assembly of that Province, last session, agreed upon an address to Her Majesty, praying that she would be graciously pleased to recommend to Her Parliament to pass an Act imposing a duty of $2\frac{1}{2}$ per cent. *ad valorem*, on imports into Lower Canada, to be applied to the payment of interest on the debt of Upper Canada, &c. This is not mentioned for the purpose of offering an opinion on the propriety or impropriety of the proposed measure; but merely to point it out as a consequence of dividing the former Province of Quebec. The House of Assembly also framed an address to the Throne, accompanied by a series of Resolutions and the Report of a Special Committee on the political state of the Canadas, and recommending their being united on certain conditions, some of which will probably be considered inadmissible; but it is not necessary to make many observations thereon. It is, however, proper to notice that they have fallen into some mistakes, through inadvertence and inattention to recent events and to the History of Canada since its cession to the Crown of Great Britain. For example, at page 7 of the Report, it is stated that disaffection in Lower Canada is exclusively confined to Canadians of French origin, from a "hatred of British rule and British connexion;" and, though this assertion is somewhat qualified in page 16, yet even there it is not correctly stated. For, on examination it will, I am

persuaded, appear evident that, in proportion to the relative numbers of the two races, there are nearly, if not fully, as many disaffected persons and traitors, of the leaders at least, among those of British and Irish birth and descent, as among the French Canadians. These leaders it is clear, have a dislike or hatred not only to *British* rule, but also to rule of *every description*; for their ambition and hearts' desire is bent on becoming themselves *rulers!* At page 22, there is a boast of the loyalty and exalted patriotism of the Upper Canadians: now, though this is readily admitted to be the real character of the inhabitants generally, yet truth requires they should be put in mind that, at different periods, there have been many exceptions, who created much agitation and internal disquiet; more indeed or fully as much as existed in this Province, until the late troubles which produced an open rebellion last year. It then soon became evident that the conspiracy extended also to Upper Canada, and had been hatching for several years.

There are still many persons living in that Province who must distinctly remember the intestine excitement and troubles, for about ten years preceding the war of 1812, connected with the names of William Weekes, John Mills Jackson, Joseph Willcocks, Judge Thorpe, and Mr Wyatt. Shortly after the peace, much agitation and trouble was also occasioned, for a few years, by Robert Gourlay. When the war broke out with the United States many people left the Province and joined the enemy, among whom were three men who were at the time, or had been formerly, members of the House of Assembly; their names were Willcocks, above mentioned, Merckle or Marcle, and Mallory. So many had left their homes and turned traitors, that they formed a battalion in the enemy's ranks, called the "Canadian Volunteers," under the command of Joseph Willcocks, who was killed in a skirmish near Fort Erie. A death too honorable for such a man, as was remarked at the time. On the shore of Lake Erie, eighteen traitors were taken in arms, having joined a party of the enemy to plunder their fellow subjects, in the Autumn of 1813. They were tried at Ancaster; and fifteen were convicted, of whom eight suffered for their

crimes.^a In Lower Canada the Militia turned out bravely to defend their country; and it is not known that any of them ever deserted to the enemy or were concerned in any treasonable practices. The Militia of Upper Canada also did their duty, in general, most gallantly and perseveringly; and these exceptions and particulars are stated, merely to show that they have been overlooked by the Assembly of that Province, in estimating the loyalty of the Canadas. It is not with the intention of increasing or creating loyalty in the Canadas, that I recommend their being re-united, though that is very desirable, if it could, with certainty, be depended on as a consequence of their Union; but it is to cure the evils and remove the complaints of Upper Canada, arising from the want of a seaport and the difficulty, we may say the impossibility, of apportioning the public revenue, so as to give satisfaction to both Provinces. Some sections of the United Province would no doubt occasionally be dissatisfied with their shares of money granted for public improvements, &c. and this has sometimes occurred in Lower Canada between Quebec and Montreal; particularly in regard to the duties levied on imports, many years ago, for building jails in the different Districts: but such local complaints cannot be attended with any permanently bad consequences. The Assembly suggest the annexation of a considerable part of the Lower to the Upper Province; or a *Legislative Union* of all the British North American Provinces. The Legislative Council of Upper Canada suggest, and seem to recommend, something like a *Federal Union* of these Provinces. But, let any person consider and examine all the three schemes in detail, how they are to be effected and in what manner they would operate, and, if I am not much mistaken, he will soon be convinced that none of them could cure or remove the difficulties that were foretold

^a Those who are too young to remember these circumstances, will find them fully detailed in William James's *Military Occurrences*, two volumes.

On the return of peace the Prince Regent gave up the forfeited estates of traitors, towards indemnifying the sufferers by the war in Upper Canada. In consequence, a Provincial Act was passed (58, Geo. III. c. 12,) to authorize the appointment of Commissioners, &c. and to regulate the disposal of these estates, which appear, from the preamble, to have been numerous.

by Mr Lymburner, in 1791, and which now actually exist, and have existed for many years, between Upper and Lower Canada.

It cannot, however, be expected that the Union will operate immediately as a talisman or specific remedy for all complaints; on the contrary, it will require some time and a little forbearance from all parties, before its beneficial effects can be sensibly felt and seen. And, while the Mother Country does not relinquish the power of disallowing Provincial Acts, neither Province has much to fear from the Union. This power, to be sure, has seldom been brought into action: one instance I recollect several years ago in Upper Canada, regarding the will of a person who had acquired property in the Province, though an alien, which was afterwards satisfactorily arranged: another case occurred in this Province, not more than three or four years ago, in consequence of some improper enactments in an election law. The reservation of such a power by the Supreme Government, and the knowledge that it will be exercised when necessary, must prove a strong check on the Provincial Legislatures.

Some people in each Province seem to view the proposed Union with awe, as an event that will likely be followed by dire effects. This alarm is probably natural to mankind, when contemplating any change about to take place in their condition or government, and even in more trivial matters. Thus, in the year 1748, on the return of peace in Britain, the increase of commerce and manufacture brought also a tide of luxury, immorality and profligacy; and the erection of new turnpikes was considered, in some parts of the Island, as a great evil and was forcibly resisted. "The whole land was overspread with a succession of tumult, riot, and insurrection, excited in different parts of the kingdom by the erection of new turnpikes, which the Legislature judged necessary for the convenience of inland carriage. In order to quell these disturbances, recourse was had to the military power; several individuals were slain, and some were executed as examples."° I have also read, (but forget where) that when the change from old to new style was under

° Smollett's History. Vol. iii. book 3, ch. i. section 29.

consideration, only three years afterwards, the whole country, from John o' Groats' House to the land's end, was in anxiety and dread of the consequences! Yet the inhabitants of Britain have long ago been reconciled to the payment of toll at the turnpikes, and to the change of style. Such, I am confident will also be the case after the Union of the Canadas, if effected on proper principles and with due precautions. The measure is urged, chiefly on the ground that it is absolutely necessary to avert greater evils. If "each Province could be enabled to raise and regulate its own revenue," then they might be allowed to remain as at present; but, owing to their geographical position, that is impracticable. There is yet another strong reason for the Union, which must be noticed: when forming only one Province, the inhabitants will be much more able and efficient in quelling any intestine commotion and in resisting foreign aggressions, than they can possibly be when separate. This reason was urged by the minority, on the question of the Union, in the Legislative Council of this Province, in 1823, and appears on their Journal.

In perusing the Report adopted last Session by the Legislative Council of Upper Canada, it is a disappointment to me, that they have not entered into some details, as to the principles and terms on which they consider the Union might be effected; more particularly as it was attempted, without success, fifteen years ago, and has often since occupied the public attention.—There is, however, one paragraph of the Report, in reference to Lower Canada, which strikes me forcibly, as well deserving of attention and serious consideration. It occurs in page 64, as follows:

"Your Committee do not hesitate to say, that a representative form of Constitution should never have been conferred on any Colony, until the administration of Justice, and the necessary charges for the Civil Government, had been so provided for as to secure them against the caprice of either branch of the Legislature—or at least the passing an Act for that purpose, in the first Session, should have been the condition on which alone their charter should continue in force; and such an Act would be the best evidence a Colony could give of its de-

sire to guard the integrity of its institutions. The observation of what has passed in Lower Canada within the last twenty years can leave no doubt on this point."

We shall now refer more particularly to the provisions and enactments of our Constitutional Act, (31, Geo. III. c. 31,) as they have been interpreted and acted upon, at different times, in the Canadas. It has been already stated that the Legislatures of these Provinces have generally acted on the untenable assumption that the Church of England is the *Established Church* in these and all the other Colonies, which has proved unjust and injurious to the claims and rights of the Church of Scotland. It would be tedious and not interesting to enter much into detail on this point; it is therefore considered sufficient to refer briefly to some of their Acts. In Upper Canada, the 33, Geo. III. c. 5, gives power and authority to Justices of the Peace to solemnize marriages, where no minister of the English Church resides within a limited distance; but ministers of the Scottish Church are not mentioned, thereby giving a preference over the latter to Justices of the Peace (as far as a Provincial Act can do it). The Act, 38, Geo. III. c. 4, reserved for His Majesty's pleasure, authorizes ministers or clergymen of the Scottish Church to celebrate matrimony, under certain conditions and restrictions, not at all flattering; but, on the contrary, degrading to the ministers and other members of that Church. The next Act worthy of notice is the 9, Geo. IV. c. 2, passed in 1828, "for the relief of the Religious Societies therein mentioned." It enumerates ten different denominations of Christians, to whom, under a prescribed form, power is given to hold land in perpetuity, but not more than *five* acres for any one congregation. At the head of the list are placed *Presbyterians*, which of course includes the Church of Scotland. The last Act on this subject, that I am aware of (not having seen those of several of the latest Sessions) is the 1, Will. IV. c. 1, passed in 1831, to make valid certain marriages, &c. It prescribes rules for registering marriages; and that the clergyman or minister must obtain a certificate from the Justices in Quarter Sessions of the Peace, &c. before he can solemnize matrimony. These provisions extend to nine or

ten different denominations, at the head of which are placed "Members of the Church of Scotland." The only movement, that I am aware of, by the Legislature of Upper Canada (and that was by the Assembly alone) is a petition to the King in 1824, which is introduced into the evidence of Mr J. C. Grant, before the Canada Committee of the House of Commons, on the 17th June, 1828.

In Lower Canada there is no objection against the first Act (35, Geo. III. c. 4,) relative to the Registry of Marriages, &c. But, in 1804 another Act was passed (44, Geo. III. c. 11,) "to confirm certain marriages therein mentioned," which is very inimical, though in a covert manner, to the Scottish Church. It consists of two Sections only; the first confirms certain marriages, including those previously solemnized by ministers of our Church, with respect to which no doubts had ever before been raised; the second clause takes special care, in the last sentence, to enact that nothing in the Act shall be construed or taken "to confirm any marriage which shall be celebrated after the passing of this Act." Thus raising doubts and then dispelling them, so far as relates to the past; but, at the *end* leaving them in full force for the future; which occasioned some wag to remark, that this Act, like a *wasp*, carried the *sting in its tail*. A similar Act was passed several years after, (1, Geo. IV. c. 19,) regarding marriages in the Inferior District of Gaspé. In 1827, an Act (7, Geo. IV. c. 2,) was passed with some difficulty, by the exertions of a late much esteemed legislator; to prevent the bad consequences that might possibly ensue to individuals or to the community by allowing such Acts to remain on the Statute Book without amendment. The last of this description is the Act, 10 and 11, Geo. IV. c. 58, "for the relief of certain Religious Congregations therein mentioned." This seems to be an imitation and of course is intended as an improvement of the Upper Canada Act of 1828: and, instead of specifying different denominations, it is for the relief of "any Religious Congregation or Society of Christians." They are

† The Hon. John Richardson, a member of the Legislative and Executive Councils.

† in favour of the Church of Scotland

enabled, by appointing trustees, &c. to hold only *eight arpents* (an *arpent* being nearly an acre) of land in the country; and in towns no more than half an *arpent*, for the use of any one congregation. It is somewhat singular and appears as an anomaly, that two Acts have been passed within the last eight years, to incorporate the congregations of two Scottish Churches in the City of Quebec: the 10 and 11, Geo. IV. c. 57, and 1, Will. IV. c. 55; they were both reserved by the Governor, and in due time received His Majesty's assent. Each congregation is enabled to purchase, accept by gift, or otherwise to acquire real estate, and to sell or dispose of the same; but are restrained from holding more than to the annual value of eight hundred pounds sterling at one time, for each congregation. And, when a minister is appointed, he must be approved of by the Governor before he enter on his ministerial duties.

In Upper Canada the most conspicuous and zealous advocates of the exclusive claims of the English Church are Dr Strachan, the venerable Archdeacon of Toronto, in the Legislative Council; and in the House of Assembly, Mr Hagerman, now Attorney General. When Solicitor General, in 1835, he made a long elaborate speech, intended to prove the legal right of that Church to all the lands set apart for the support of "a Protestant Clergy," and to the right of being *the Established Church* in all the British Colonies.¹ These claims were denied by some speakers on the other side, but none of them seemed fully prepared to controvert in a proper manner, the doctrines that he advanced, by referring to authorities and meeting him on his own ground. This occasioned a long article to appear sometime afterwards, in an Upper Canada newspaper, containing remarks on his speech and endeavouring to refute the claims he put forth on behalf of the English Church.² The speech of the *Solicitor General* on such an interesting question was of course copied into all the papers of any consequence in the Province and generally read: while the long remarks to which it gave rise, were inserted only in the paper to which they were addressed, and being anonymous, were, it may be pre-

¹ See Appendix, No. IV.

² See Appendix, No. V.

sumed, read by only a very few persons, and could produce no effect on the public opinion. This, and perhaps other causes, seems to have emboldened Mr Hagerman, for in 1837, only two years after, when the same subject was under consideration, he made a speech in the House, very unbecoming the situation he held and the place where he stood; and which, I may venture to say, has few if any parallels, for its vituperation, hostile spirit and irritating language towards the Scottish Church.* This speech, though not so injurious to our real interests as that delivered in 1835, yet had the effect of arousing the members of our Church, and occasioned the mission of Mr Morris to London.

The Acts incorporating two congregations in Quebec were obtained with much trouble, and it is believed at considerable expense. The other Acts of both Provinces, for the "relief of certain congregations," including those of the Scottish Church, seem to have been considered as valuable boons conferred on that Church, with which she ought to be satisfied; though no more than *five acres* in one Province, and *eight arpents* in the other, can be held by any one congregation, even though they find the means of purchasing property, or receive it by gift, or have it bequeathed to them! While at the same time, the English Church has set up a claim to all the lands reserved in both Provinces for the support of "a Protestant Clergy." And this claim is still persisted in, notwithstanding that our Constitutional Act, Sections 35 and 41, enacts that the provisions regarding the land so reserved, &c. "shall be subject to be varied or repealed," by the Provincial Legislatures, under the formalities and restrictions prescribed by Section 42. But further, the matter was actually referred to the Legislatures of both Canadas in January, 1832, by messages that were penned at the Colonial Office, in His late Majesty's name: as is stated in Lord Goderich's despatch to Lord Aylmer, No. 70, dated 21st November, 1831, and communicated to our Assembly in November, 1835. The messages are exactly the same to both Legislatures, changing only the words that obviously require to

* See Appendix, No. VI.

be changed; and they distinctly admit and recommend the concurrent claim of the Church of Scotland.[†]

This claim is founded, not only on the Act of Union between the two kingdoms, but also on the 31st of Geo. III.; for it is beyond a doubt that the Ministers of our Church come under the general term, *a Protestant Clergy*, for which the provision is made. And it was so understood, by some members at least, when the Bill was debated in the House of Commons; and has since been declared to be so, by the opinion of the crown lawyers, in 1819. In the Commons, on the 8th April, 1791, in answer to some remarks from Mr Fox regarding the appropriation being too large, Mr Pitt, among other observations, said, "if it turned out to be too much in future, the state of the land appropriated to the clergy, like every thing else provided by the bill, was subject to revision." *Thursday 12th May*, in committee of the whole house; *Mr Pitt* spoke of *Protestant Clergy*, and the "Protestant Clergy of the established church," which the act gives authority to endow with lands; and explained, "that this was done to encourage the established church, and that possibly hereafter it might be proposed to send a Bishop of the established church to sit in the Legislative Council." *Mr Fox* disagreed with the whole of this plan. He said "he thought the Roman Catholic religion ought to be the established church of the Colony, or the Presbyterian (that of the kirk of Scotland). He conceived setting aside a seventh part of the lands granted for the maintenance of the Protestant Clergy, was too great an allotment, and that the idea of sending a Bishop of the established church of England to sit in the Legislative Council, was in every point of view unjustifiable." *Mr Duncombe* and *Mr Ryder* said each a few words—then again—
 " *Mr Fox* still censured the whole plan, and reminded the house that *Mr Dundas* had, two evenings since, boasted that the security of the kirk of Scotland was its being erected on the rock of poverty: according to the provisions of the bill, *Mr Fox* said, even the clergy of the kirk would have larger incomes in Canada than in Scotland."

[†] See Appendix, No. VII.

Mr Dundas then gave “an historical detail of the mode of proceeding, by which the Clergy in Scotland were supported,” which it is not necessary to insert in this place. From my recollection of proceedings in the House of Peers, which I have not seen for several years, their Lordships passed the Bill with very little debate and without amendment.

The truth seems to be, that, whatever may have been intended by the framers of the Bill and the minister who introduced it into the House of Commons, the majority overlooked the effects that might have been foreseen and have already, in part, occurred from the enactments of Section 38, that “it shall and may be lawful for His Majesty,” &c. to erect “parsonages or rectories according to the establishment of the Church of England,” and to endow them from time to time with the lands reserved for the support of a Protestant Clergy: while he is not invested with a similar permission or power in favour of the Church of Scotland. This omission and the effect it has produced have operated the repeal of a most important part of the fourth Article of Union between the two Kingdoms. However, as it was an *incorporating*, not a *federal* union, I admit that Parliament had the strict legal right to do so. “Because the Legislature, being in truth the sovereign power, is always of equal, always of absolute authority: it acknowledges no superior on earth, which the prior legislature must have been, if its ordinances could bind the present Parliament.”^u But, when I admit this absolute power in the three branches collectively, I have at the same time such confidence in their equity, sound policy, justice, and good faith, that I cannot believe the omission would have taken place, had the consequences been pointed out; or had it been indicated, as might have been done, by some such words as the following: “Anything in the Act of Union to the contrary notwithstanding.”

The fourth Article of Union is in the following words:—

“That all the subjects of the United Kingdom of Great Britain shall, from and after the Union, have full Freedom and Intercourse of Trade and Navigation to and from any Port or

^u Blackstone Com. vol. i. p. 90.

place within the said United Kingdom, and the Dominions and Plantations thereunto belonging; and that there shall be a communication of all other Rights, Privileges, and Advantages, which do or may belong to the subjects of either Kingdom; except where it is otherwise expressly agreed in these Articles."

In the 5th, 6th, 7th, 8th, 11th, and some other Articles, there are certain *express* stipulations or provisions in favour of the subjects of one Kingdom, (regarding ships foreign built, grain or victuals, duty on salt, on windows and lights, &c.) that are not granted to those of the other, which explain the exception at the end, and give an explicit and determinate meaning to every word of the fourth Article.

In claiming for the Church of Scotland, in terms of this solemn compact, all the "Rights, Privileges, and Advantages," in the Colonies generally, and more especially in those acquired since the Union, that are enjoyed therein by the Church of England, I am not so unreasonable as to expect that they will be granted, except on the same or similar conditions (in so far as concerns our temporal interests) as are enacted for the sister Church, in Section 39 of the Constitutional Act. Namely, that the Sovereign or some person or persons (other than clergymen of a different Church) appointed by Royal authority, should be the patron or patrons of our Churches. From the precedent of the two congregations already incorporated at Quebec, it may be inferred, that the approval of the clergyman by the Governor would be considered sufficient. However, I am inclined to the opinion that it would suit better for both parties, that he should give a presentation to the presbytery, in favour of the candidate for ordination: but it is difficult to say, as we have not the benefit of experience; perhaps it might be left optional to follow either mode. If they are both contrary to the peculiar tenets held on this point by some ministers or congregations of our Church, these need not accept the endowment or any boon; but may, if they choose, avail themselves of the Provincial Acts now in force; by which they can, in country places, hold *five acres* in one Province and *eight arpents* in the other.

It has occurred to me, that it would be advantageous to our

Church if a Commissioner, being a layman, were appointed by the Queen or Her Representative here, to be present at the meetings of our Synod, similar to the practice that has long obtained in the General Assembly at Edinburgh. Objections may, and no doubt will, be urged against it; but I would ask if ever any proposal was or can be made, against which objections could not be started? Against this, some plausible reasons may perhaps be given; but the beneficial consequences to our interests, may be expected to overbalance any disadvantages that would attend its adoption. It is sufficient that I have suggested it for consideration.^u

It is probable, and I believe certain, that many of the objections, and perhaps the acrimony of some individuals, against the extension or establishment of our Church, arise from the republican or democratic nature of her internal government and discipline, according to what King James the sixth is reported to have said, "no Bishop, no King." The fears on that account have vanished since his time; but the prejudice against her still remains with some people.^v The recommendations and suggestions that I have made, if put in practice, might go far in removing such prepossessions: and, being in themselves reasonable and just, I hope the majority of my countrymen will coincide in my opinions on that head.

Another expedient has occurred to me within the last two or three years, which, if it should be attended with success, would be of great benefit to our Church. At present, when a minister is to be ordained to any newly formed congregation, suppose in a part of the country recently settled; before ordination the Presbytery requires from the congregation what is commonly called a *bond*, but is nothing more than a subscription list where the amount of individual subscriptions is expressed in *figures* merely. Sometimes, however, on the strength of such lists, two or three of the congregation undertake to collect the money and

^u All and more than is here recommended, is permitted and sanctioned by our Confession of Faith, chapters 23 and 31.

^v See the letter to Lord Liverpool, already mentioned, page 46 and 47 of the letter.

give a *bond* to the clergyman, though more commonly it is only a written promise, *not under seal*, to pay him a certain sum annually. But, in any of these cases, it is not probable that he could recover the money from their heirs or representatives.— And his successor could not, for want of a corporate capacity, maintain an action against the original subscribers or the bondsmen. It is, therefore, proposed that the owners of land should be encouraged and enabled by law to burthen their farms with such an annual quantity of the produce thereof, as they may think fit, for the support of a Minister of the Scottish Church, and that he, as a *sole* corporation, should be enabled to receive and exact it. This allowance might be in wheat or other grain, hay, potatoes, fuel, &c. and would prove a much better and more secure support than money, which often fluctuates in value. It must remain a burthen on the property, even though that should afterwards pass into the hands of proprietors belonging to a different church: and it might be left optional with the owner to create the burthen during his lifetime or by his last will and testament. It is hardly necessary to add, that the incumbent may commute with the proprietors for the value in money, during his incumbency, on such terms as they may mutually agree upon. In new settlements the farmers in general are not able to do much for their clergymen; but yet some of them might give a little assistance in this way, and it would have the great advantage of being permanent. Whether something of the same nature might be attempted in the cities and towns, must be left to the consideration of others better skilled and more learned in the law than the writer. If the *voluntary system*, as it is called, ever produce any beneficial results, it must be carried into effect upon some plan of a nature similar to this.

The remarks on Mr Hagerman's speech, in Appendix, No. 5, are extended to great length; but I must crave the reader's indulgence to add something more. He speaks much and places great reliance on the supremacy of the Sovereign, as declared by Statute First of Queen Elizabeth. Hume, in his history of that Princess during the year 1584, gives some account of the ecclesiastical court established during her reign, and concludes

the paragraph by stating that, as its jurisdiction was destructive of all law, so its erection was deemed by many a mere usurpation; "and had no other foundation than a clause of a Statute, restoring the supremacy to the Crown, and empowering the Sovereign to appoint Commissioners for exercising that prerogative. But prerogative in general, especially the supremacy, was supposed in that age to involve powers which no law, precedent, or reason could limit and determine."^x Long afterwards, in the Province of New York, Lord Cornbury, who was Governor from 1702 to 1708, committed some illegal and very oppressive acts himself, and abetted or countenanced the same in others, under the specious pretence or colour of Queen Anne's ecclesiastical supremacy; complaints were made, and it is added by the historian: "Her Majesty graciously listened to the cries of her injured subjects, divested him of his power, and appointed Lord Lovelace in his stead; declaring that she would not countenance her nearest relations in oppressing her people."^y

Mr Hagerman founds, what he considers one of his strongest arguments in favour of the Church of England, upon her laws and canons, which he says declare her "to be the Established Church throughout the British dominions." On this point, I must again refer to Blackstone, vol. i. page 82 and 83. He there states what forms the body of the Roman canon law, and then adds:

"Besides these pontifical collections, which during the times of Popery were received as authentic in this Island, as well as in other parts of Christendom, there is also a kind of national canon law, composed of *legatine* and *provincial* constitutions, and adapted only to the exigencies of this church and kingdom.

^x The ecclesiastical court erected by this Princess, appears to have acted in a very arbitrary and illegal manner; though she herself is said to have explained the title, "Head of the Church," assumed by her father, to mean no more than, "that, under God, she had the sovereignty and rule over all manner of persons born within her realm, either ecclesiastical or temporal; so as no other foreign power shall or ought to have any superiority over them." Which seems to be all that is now meant by the King or Queen's supremacy over any other Church than that of England.

^y He was the Queen's cousin; see Smith's History of New York, part iii.

The *legatine* constitutions were ecclesiastical laws, enacted in national synods, held under the Cardinals Otho and Othobon, legatees from Pope Gregory IX. and Pope Clement IV. in the reign of King Henry III., about the years 1220 and 1268.—The *provincial* constitutions are principally the decrees of provincial synods, held under divers Arch-Bishops of Canterbury, from Stephen Langton in the reign of Henry III. to Henry Chichele in the reign of Henry V.; and adopted also by the province of York in the reign of Henry VI. At the dawn of the Reformation, in the reign of Henry VIII., it was enacted in Parliament, that a review should be had of the canon law; and, till such review should be made, all canons, constitutions, ordinances, and synodals provincial, being then already made, and not repugnant to the law of the land or the king's prerogative, should still be used and executed. And, as no such review has yet been perfected, upon this Statute now depends the authority of the canon law in England.

“As for the canons enacted by the clergy under James I., in the year 1603, and never confirmed in Parliament, it has been solemnly adjudged upon the principles of law and the constitution, that where they are not merely declaratory of the ancient canon law, but are introductory of new regulations, they do not bind the laity; whatever regard the clergy may think proper to pay them.”

Mr Attorney General Hagerman must give the precise words of the canons he alludes to, or refer to them in such a way that others may also read them and know their import; he must, besides, shew that they make part of “the laws and canons of the Church of England, which are *lawfully made and received in England.*” But, until he shall have done all this, the argument he builds thereon is founded on sand, and must fall.

It seems to be an opinion entertained by many, that there must be in every state or country, some one Church or denomination of Christians, that enjoy greater privileges and support than others, and are to be styled *the Established Church*; this opinion, though not distinctly expressed, seems to have been entertained by some members of the House of Commons when our Constitutional Act was under consideration, as may be in-

ferred from certain remarks thrown out in debate. This has always appeared to me a mistaken opinion, even when applied to independent states, and still more so in colonies or dependent provinces. In Great Britain, forming only one kingdom since the Union, there is one Church established in the southern and another in the northern part of the Island; yet no difficulties occur there in consequence, the peculiar privileges and immunities enjoyed by both, being well understood and clearly defined by law. In consequence of this erroneous opinion, when any other Church or denomination of Christians deny the right of the English Church to be called the *Established Church of Canada*, it appears immediately to be inferred or assumed, that those who oppose their use of this title intend to claim it for themselves. It has no distinct legal meaning in the Colonies, that I am aware of, and appears to have been encouraged, rather by the mistaken policy of the cabinet ministers at different times, than by any positive enactment of the British or the Imperial Parliament. At the time of the Union such a thing was never contemplated for the Colonies, as will appear by the Act itself and others therein referred to or in part recited. Neither is there any mention of it in the detailed history of the Union by De Foe; on the contrary, both nations were anxious for the settlement of their religious establishments, within their respective kingdoms only, which is evident from different parts of the history.² It must be noticed that he was employed by Lord Godolphin, one of Queen Anne's ministers, and went to Scotland on matters connected with the Union; which gives his history a degree of interest and authenticity that it would not other-

² I allude more particularly to page 484 and following, of the London Edition in 1786; but the passage is too long to insert here. After adverting to the long debates, &c. in Scotland, contrasted with the despatch with which the act passed in England, he states that Episcopacy was thereby established in England and Presbytery in Scotland; and then adds a remark that well deserves the serious attention of all parties. "At the same time, I think the matter clear, that with respect to Union, their establishment is reciprocally secure, and either kingdoms cannot now put their hand to the weakening or injuring the establishment of the other, without setting, at the same time, its hand to the destruction of its own constitution."

wise possess.^a But, what puts it beyond all doubt that religious establishments in the Colonies were not even thought of, is an Act of the English Parliament, (3 and 4, of Anne, c. 7,) authorising the appointment of Commissioners, to treat of an Union of the two Kingdoms. In the last section, it is enacted and declared, "That the Commissioners to be named in pursuance of this Act, shall not by virtue of such Commission, treat of or concerning any Alteration of the Liturgy, Rites, Ceremonies, Discipline or Government of the Church, as by Law established within this Realm." In the "Act for securing the Church of England as by Law Established," which makes part of the Act of Union, this section is recited in the preamble, without omitting the words *within this Realm*. This Act is for *securing*, not *extending* nor *establishing*, the church of England in places where it was not previously established. It has, therefore, surprised me much to find that the concluding words of the coronation oath, therein prescribed, "the territories thereunto belonging," are supposed by implication to establish it or that it was previously established by law in the distant dominions and plantations of England; though those who hold this opinion cannot shew any other authority than these words of the oath, which evidently refer to Jersey, Guernsey, the Isle of Man, and perhaps some other small islands or territories. It may here be observed that this Act, in referring to and confirming former Acts of Parliament, "for the establishment and preservation of the Church of England," &c. specifies only two (13, of Elizabeth and 13, Charles II.); but the first of Elizabeth, on which Mr Hagerman appears chiefly to found the claims of his church in the Colonies, was not considered of sufficient importance to be particularized; though it is no doubt included in the general words, "all and singular other Acts of Parliaments, now in force," &c. &c. The word *Realm*, just mentioned, also occurs several times in the 22d Article of Union, and always in the singular number; it is first applied to England alone, then to both Kingdoms after the ratification of the Union, when they were

^a See an account of De Foe's Life, prefixed to the edition of his History, printed in 1786.

to become *one*, under the name of Great Britain. But, notwithstanding all this, if the Attorney General of Upper Canada and the Archdeacon of York or Toronto set to work,

“And torture one poor word a thousand ways,”

They may *enlarge* its signification, so as to include all the dominions and plantations that do now, or hereafter may, belong to Great Britain! It is by this species of *torture* that the words, “a Protestant Clergy,” have been, by some writers, *restrained* so as to signify only Clergy of the English Church! The last article is short and seems intended to confirm the whole, “That all Laws and Statutes in either Kingdom, so far as they are contrary to, or inconsistent with the Terms of these Articles, or any of them, shall, from and after the Union, cease and become void, and shall be so declared to be, by the respective Parliaments of the said Kingdoms.”

Having mentioned the Archdeacon of York, some notice must be taken of his letters to Mr Morris and one to his brethren of the clergy and laity, published last winter, first in a periodical called “The Church,” and afterwards by themselves in a pamphlet. It would be tiresome and unprofitable to myself and my readers to follow him throughout, I shall, therefore, select only certain passages for observation. He and others in this country have set up an exclusive claim, on behalf of the English Church, to all the lands set apart for the support of a Protestant Clergy; which is at variance with the opinion of the crown lawyers in 1819, and other opinions that appear in the Report and evidence collected by the Canada Committee of the House of Commons, in the year 1828. To these opinions he pays no deference, nor to the more explicit message sent to the Legislatures of both Canadas in January, 1832; for, when there is any appearance of their being acted upon, he talks of the vested rights of his Church, and cries out, “robbery, destruction and spoliation of the Established Church,” and again invokes “her vested rights,” &c. Several times he also launches forth an implied or direct censure against the Colonial Department. In almost every page he speaks of the *Established*

Church, meaning to apply that term to a branch of the English Church in the Canadas. And also tells us it is, "the religion of the Sovereign and recognized by the Constitution," "the Church of the Sovereign," and "the National Church," &c. (see pages 8, 9, 11, 30, 33, 34, 47 of the pamphlet). That it is the Church of the Sovereign by a positive and explicit enactment of the English Parliament, which is confirmed by the Act of Union, I readily admit.^b But I deny that it is recognized by any competent authority or power, that has been pointed out, as the *National Church* or the *Established Church*, to the exclusion of all other establishments, in any of the Colonies, dominions and plantations beyond the seas; and the Sovereign is not so illiberal as to require or expect that it should be so.— As to the Acts of Upper Canada, referred to by Mr Hagerman, also some of those passed in Lower Canada; they do not in my mind support his argument, but in general are rather to be considered as examples of the Provincial Legislatures, including the Governors, having overstept the minute and positive restrictions imposed upon them by Section 42 of their Constitutional Act. I have not the same means of knowing the Constitution of Nova Scotia, but believe the Legislature must also have exceeded its legitimate power in passing the Act of 1758, referred to in the Appendix, No. 5.

The Archdeacon in his third letter, page 15, informs us that, by the treaty of Union, members of the English Church are dissenters in Scotland, and on the other hand, members of the Scottish Church are dissenters in England; which has never been denied by either party. But, in the conclusion of the same paragraph, he informs us of something new that we had not discovered before; to wit, that members of the Scottish Church are also dissenters, "by the fundamental articles of

^b At the Revolution, in the first year of William and Mary, (Session 2, c. 2, s. 9,) the succession was limited to the *Protestant* line only; which would include the Churches of England and Scotland, and others on the European continent. But, in the Act "for the further limitation of the Crown," &c. (12 and 13, Will. III. c. 2, s. 3,) it is enacted, "That whosoever shall hereafter come to the possession of this Crown, shall join, in communion with the Church of *England*, as by law established."

the Union, in all the colonies." But, as he does not quote the words, nor point out in which articles they are to be found, we think he is mistaken. Perhaps his meaning would have been better expressed by saying 'the Church of England was, by the Act of Union, established in England and all the Colonies, present and future; but the Church of Scotland was established in Scotland only.' Whichever expression suits him best, he must have inflicted *cruel torture* on the words of that solemn treaty, to draw any such conclusions from it!

In the letter to his "Brethren of the Clergy and Laity," the Archdeacon in more than one place, expresses great surprise and astonishment "that it was reserved for two or three laymen," in a remote colony at this late day, "to discover rights and relations resulting from the Act of Union," which had hitherto escaped notice in all parts of the British dominions. This is a very convenient and easy mode of argument, to set aside our legal claims, without quoting the words on which they are founded. Let those who read the Archdeacon's letters, only consider that it does not require great learning nor intense study to understand the subject: a moderate knowledge of the English language and an attentive perusal of the Act, being all that is necessary. Besides, it is precisely in remote colonies that such discoveries may be expected, where the infringement of the fourth Article is seen and severely felt by a numerous and intelligent portion of the colonists. Accordingly, complaints, similar to those from Canada, have reached the Mother Country from the distant colony of Van Dieman's Land, within the last three or four years; and were accompanied by a very well written pamphlet on the subject, printed in Hobart Town. But, farther, Dr Strachan is mistaken in assuming that this is the first time the Act of Union was appealed to in the colonies. This is more particularly noticed in the Appendix, No. 5, where reference is made to Smith's History of New York; and to the opinions and recommendations of Archbishop Secker, in 1751; in which Bishop Butler had heartily concurred twenty years before, as stated by the Archbishop's biographers.

We cannot for a moment believe that these eminently distin-

guished Prelates, who are numbered among the ornaments of the English Hierarchy, were ignorant of the Act of Union. It had passed in their days,^c and if they had discovered in it, any thing more favourable to their Church in the colonies than to that of Scotland, Dr Secker would assuredly have availed himself of it in his answer to Dr Mayhew, and in the letter to Mr Walpole. The only mention of the establishment of the English Church in the colonies, that I can find in these two productions, is the following: "It is, in some of the Plantations, confessedly the established Church; in the rest are many congregations adhering to it; and through the late Extension of the *British* Dominions, and the Influences of other Causes, it is likely that there will be more."^d

No mention, in the above passage, is made of, nor allusion to, the Act of Union; nor is any reference elsewhere to be found in these publications, to that Act or any other that relates to the question at issue. In imitation of the Rev. Dr Strachan, we may now be allowed to express our surprise and astonishment, that it was reserved for an Archdeacon, with the assistance of a Solicitor General, both in the Legislature of a remote colony, "to discover rights and relations resulting from the Act of Union, which were never in the contemplation of those who were parties to that treaty;" and which had escaped the notice and penetration of two such eminent men as Archbishop Secker and Bishop Lutler, who had better means of ascertaining its true spirit, and it may be presumed, were at least equal to the Archdeacon in zeal, and understood fully as well the real interests of the Church of England.

In corroboration of the opinions of these two Prelates, against Bishops being invested in the Colonies with any tem-

^c Bishop Butler was born in 1692, and Archbishop Secker in 1693; the Act of Union was passed and took effect in 1707.

^d Answer to Dr Mayhew, in Dr Secker's *Works*, vol. vi. p. 393: Dublin edition, in 1775. The answer was printed in England, in 1764; and reprinted in America, as stated in the Review of his Grace's life and character. At that time and previously, it seems to have been the practice to begin all nouns with a capital letter, which has been followed in making quotations.

poral power, as stated in the Appendix, No. 5; it is proper to notice the evidence taken at Quebec, by the Royal Commissioners of Enquiry, in 1836; which appears in the Appendix to their third Report, page 129 and 132. John Neilson, Esquire, says: "The heads of the churches might be in the Council, but I should fear danger from it. It might introduce feelings of religious difference into the Council, and dissenters might feel dissatisfaction, from an impression that the clergy had an interest in the Council adverse to their several denominations." R. E. Caron, Esquire, Mayor of Quebec, was asked; "Do you think it would be acceptable to the country that one or both of the Roman Catholic Bishops and the Protestant Bishop should be in the Council?" Answer. "I have never reflected on that subject; but at first sight my impression is, that it is better to leave the Bishops to their proper and important duties, than introduce them into a political body." These opinions regard the Executive Council only, the members of which may be struck off the list whenever the Sovereign thinks fit; but they will apply with double force to the Legislative Councillors, who are appointed for life, and cannot be removed at pleasure by the Sovereign.

When the House of Commons was in Committee, on 12th May, 1791, Mr Fox, amongst other remarks, said, "that the idea of sending a Bishop of the established church of England to sit in the Legislative Council, was in every point of view unjustifiable." At the time the short Act of 1804, already noticed, was passed in Lower Canada, it was imputed by many, to the influence possessed by the Protestant Bishop in the Councils and Legislature of the Province.

The Executive Government of Great Britain, it is to be hoped, will no longer pursue the mistaken policy of attempting to force upon the Canadas, contrary to their wishes, any *one* Church as *THE sole Established Church* of these Provinces.—But, at the same time, there is no necessity for flying to the opposite extreme, and giving equal support and encouragement to all sects who profess to be Christians; which, in my mind, would be impracticable and also unjust and impolitic. A middle course is undoubtedly the best, and, as I speak only in general

terms, nothing that is said can prejudice the claim (that may be founded on equity and good policy) of any particular denomination of Christians. Some of them would not perhaps accept of any endowments from the Government, upon the conditions suggested for my own Church: nor, indeed, upon any conditions.^o

It has I believe been frequently remarked that clergymen when clothed with temporal power and authority, are very apt to abuse or misuse it; which is in general confirmed by experience, not excepting those of my own Church. This was probably one reason for the opinions of Archbishop Secker and Bishop Butler, against investing Bishops with any temporal power in the Colonies. But, whatever reasons they might have, the opinions and recommendations of such eminent Prelates on that particular point, ought to have great weight with the members of their Church, both clergy and laity. More especially with the Archdeacon of York, who derived much consolation against a report to his disadvantage some years ago, from a similarity he discovered between his own and the case of these illustrious men. On that occasion he said: "but I am accused of being an apostate from the Kirk of Scotland. Were this true, I need not be ashamed of doing what Archbishops Tillotson and Secker, and Bishop Butler have done before me, but my case is exactly this." He then gives a brief account of his parentage, &c. which would not be interesting or instructive to the reader.^f

Though the Rev. Dr Strachan's letters have given occasion for much animadversion, yet we derive considerable advantage from that which is addressed to the clergy and laity of his church. The secret and mistaken policy formerly pursued towards our church in Canada is thereby unveiled and exhibited to public view. The instructions from the Colonial Secretary,

^o See the address of the Congregational Association to the Lieutenant Governor of Upper Canada, Sir George Arthur, dated 27th March, 1838. *Arthur*

^f See p. 25 of Dr Strachan's Speech, delivered in the Legislative Council of Upper Canada, on 6th of March, 1828, of which he gave a copy for publication, at the request of the Council.

dated 2d April, 1818, and 22d July, 1825, addressed to the persons administering the government of Upper Canada at these dates, remained, until the publication of this letter, profound secrets to those whose rights and legal claims were to be set aside by such instructions. They were, no doubt, known to the Executive Council, at least to some of the members; but the oath of secrecy, of course, prevented them from being divulged. The legal opinion of the crown lawyers in 1819, which is very much in favour of our claim, was also kept secret until the Canada Committee of 1828 procured and published it. There is a remarkable difference between the instructions of 1818 and those of 1825: the latter are more positive, enjoining the Governor, in substance, to erect and endow Parsonages or Rectories according to the establishment of the Church of England, *within every Township or Parish, now formed, or that may hereafter be formed.* Thus leaving him no discretionary power, as to townships where there might be very few adherents, perhaps none at all, of the Church of England.[§] The reason of giving such instructions is now seen and accounted for in the last paragraph of the legal opinion of 1819. After stating that "a Protestant Clergy," includes those of Scotland as well as England; and supposing the Governor duly authorized by the Act, it is said he might apply the rents and profits of the reserved lands for the support of the one as well as the other. Part of the 38th clause is then quoted, giving power to His Majesty to authorize the Governor to erect parsonages or rectories, and to endow them, with the advice of the Executive Council, with so much of the reserved land in such township, as shall be judged expedient; even the whole, in any township where a parsonage is erected. Then comes the conclusion:—"It would be inconsistent with this discretionary power that any proportion of such lands should be absolutely retained for any other clergy than those mentioned in that clause, and we think it is not incumbent on His Majesty so to retain any proportion of such lands."

[§] See Lord Bathurst's Despatch of 22d July, 1825, Appendix, No. 8. It is considered unnecessary to insert that of 1818.

Thus, it is now evident, that, because the words of the Act are not mandatory or compulsory on the Colonial Secretary, he chose to use his discretionary power altogether for the benefit of only *one* of the Protestant Churches of Great Britain. This also furnishes a key to the statement made in Dr Strachan's speech of 1828; that a letter from Lord Bathurst, relating to the Clergy Reserves, had been read in the House of Commons by Mr Wilmot Horton, in June, 1827, "in which it was stated, that when there was a surplus beyond what the Established Church required, the disposition of it would draw the attention of Government." The Government had not rejected the application of the Scotch Clergy, &c. Some such intimation had been given, about three years previously, to a Committee of the General Assembly; and one of its leading members, in a letter, dated in April, 1824, speaks of this surplus as depending on "an event which is very justly represented as in all probability extremely remote."

It was the same year, 1825, in which these general instructions (altogether in favour of the English Church) were sent to Sir Peregrine Maitland, that a Despatch was sent from the Colonial Office, dated on or about the ninth of June, to the Rev. Dr Mearns, convener of the Committee just mentioned, in which it was stated; "that whenever a congregation in these Provinces (Upper and Lower Canada) shall have erected a suitable place of worship, and be prepared to acknowledge the jurisdiction of the Church of Scotland, and to contribute according to their means towards the maintenance of a minister, upon their presenting a memorial to the Governor and Council, the Governor will have received His Majesty's commands authorising him, upon being satisfied that these conditions have been complied with, to contribute to the support of the clergyman in such proportion as, together with the contributions of the parties presenting the memorial, may be sufficient to afford them a competent maintenance." An application was in consequence made some time afterwards, from the congregation at Cornwall, to the Governor-in-Chief, Lord Dalhousie; the answer from his Lordship's Secretary is addressed to Neil McLean, Esquire, and dated at Quebec, 13th May, 1826, and

is in substance, that His Excellency had no funds at his disposal for that purpose, "that there must have been some great mistake or misapprehension on this subject," and that "His Excellency has had no communication from His Majesty's Government on the subject." Other applications have been made at different times since, particularly from two congregations in the city of Montreal, directly to the Colonial Department, but without success; until 1837, when five hundred pounds were granted to assist the clergymen of our Church in Lower Canada for that year, but without any positive assurance that it would be continued permanently. The allowance *promised* in 1825, was similar to a certain assistance intended or provided for congregations of the English and Scottish Churches in foreign countries, out of the King's allegiance; by the British Consul's Act (6, Geo. IV. c. 87, sections 10 to 15). Our clergymen in Upper Canada have had an allowance from Government during the last ten or eleven years; but we believe it is not yet charged upon any permanent fund, being heretofore drawn from instalments payable to Government by the Canada Land Company.

With respect to the late erection and endowment of a number of Rectories in Upper Canada; we know nothing of the documents or their contents that were submitted, first and last, to the lawyers of the Crown on which to found their opinion; but, from what we know of public transactions, they must be considered invalid and illegal, in the first instance; though the approbation, or acquiescence of Her Majesty's Government afterwards, may have rendered these Acts valid and legal; but cannot, of itself, authorise the like to be done in future. On this point I have read with much satisfaction, the able arguments contained in the protest of Mr Gale, as Moderator of the Synod of Canada, dated 21st July, 1838; however, I arrive at nearly the same conclusion in a more summary manner. The reference of this matter to the Legislatures of both Provinces, and above all the formal and explicit message, penned in the Colonial Office, that conveyed that reference, (Appendix, No. 7,) are quite sufficient, in my mind, to suspend and annul all former instructions inconsistent with that reference and message; until they

shall, in their turn, be at any time revoked and cancelled in the same public manner that they were at first promulgated. Notwithstanding what was insinuated or asserted last year, by the Archdeacon of Toronto in addressing his Clergy; this opinion must stand good, for it rests on the same ground that enables commanders in the army and navy to countermand orders that have been issued by themselves or their predecessors; testators to alter or revoke their wills; and which causes *an old statute to give place to a new one.*^h But we do not wish for the "destruction" of the rectories: we only ask and contend for the rights secured to us by the Treaty of Union; that the rectors shall be divested of the *ecclesiastical authority, so far as we are concerned*, with which they are at present invested, according to the second opinion of the crown lawyers. And farther, that in all places where congregations of our Church are, or hereafter may be, formed, corporations shall be erected and endowed for their benefit, and that there shall be communicated or granted to such congregations, *all Rights, Privileges and Advantages, that do or may belong to those of the sister Church of England.* And, as a necessary consequence, that the latter shall abstain from styling herself *the Established Church of Canada*; and lay aside the recent innovation of changing the names of the legal divisions of *Townships* into *Parishes*.

We must here briefly notice two Reports of the Legislative Council of Upper Canada on these matters. The first, regarding the lands reserved for a Protestant Clergy, is dated in April, 1835; in which they recommend, as a final measure, that the question should be referred to the "Judicial Committee of the Privy Council," to give the true and legal interpretation of our Constitutional Act. In the Second Report dated in February, 1838, on the state of the Province, the same thing is again suggested, though not so strongly recommended. To this reference there are several weighty objections, but it is sufficient to mention one only, which supersedes all the rest. That is, whatever may be the opinion or decision of that tribunal, it cannot amend or change one word of the law; which, in some of its enact-

^h Black. Com. vol. i. page 89.

ments and still more in the mode of its administration, has effected an *infringement* of the Act of Union between the two kingdoms: and we are "in decency to conclude that this consequence was not foreseen by the parliament," &c.¹ It is only "the overruling power" (as Dr Strachan justly terms it) of the supreme Legislature of the Empire, that can (by amending the Act of 31, Geo. III. cap. 31,) restore to our Church and her members in Canada, those rights that have so long been withheld.

Hitherto I have, as much as possible and to the best of my judgment, treated the claims of the two Churches established in Great Britain as a legal question; which is all that was intended, and, however inadequately or feebly the task has been performed, it is hoped that what is done may draw attention to the subject and induce others, better qualified, to come forward in support of the rights of our Church in the Colonies, particularly in Canada, so that the Imperial Parliament may be moved to interpose and prevent them from being altogether wrested from us. It would lead me too far, and I shall not attempt, to depict the impolicy of the conduct that was long observed toward us by the Colonial Department. Let us hope that those now in power hold more correct opinions as to the policy, equity and justice of paying respect to our rights and claims. In the meantime, our exertions must not be relaxed; we must continue, legally, constitutionally and firmly, to urge our claims and rights in the proper quarters; remembering that if we patiently persevere in a correct course, as was done for the abolition of slavery and other great national concerns, we may also hope that our exertions will finally be crowned with success.

There is one imputation or aspersion that has sometimes been unjustly brought against us, and which it is proper to repel.—That the Government cannot depend upon our patriotism and loyalty to the Sovereign, which, by some writers, is claimed exclusively for the Church of England. This charge is boldly made against us in the letter to Lord Liverpool, formerly mentioned. Dr Strachan claims exclusive loyalty for his Church,

¹ Blackstone, vol. i. page 91.

and leaves his readers to infer disloyalty against ours, from insinuations rather than direct accusations. Thus, in the fifth letter to Mr Morris, he speaks of "the difference of the Government of the two Churches." And not a great many years ago he stated, "Had the Church of England been adequately supported in the Colonies, now the United States, they would have retained their allegiance."^k This was new and surprising to me; and, as he does not refer to, nor quote, any authorities, neither can he affirm it "from personal knowledge," I cannot give credit to this broad unqualified assertion, so far, at least, as it may be intended to apply to us. At the time when the colonies revolted, the people of North Britain almost to a man, proffered life and fortune in support of the measures adopted by the Government for suppressing the revolt: and were also very anxious for the establishment of a militia in Scotland; which, however, did not succeed in Parliament.¹ Now, it is extremely improbable that members of our Church in these colonies, would be more disloyal than others, when those of their Church in the Mother Country were so zealous in supporting the Government.

Doctor Strachan appears to have forgotten the brief and vivid description of the conduct and sufferings of a clergyman of our Church, with which he favoured the public a few years previously, which militates strongly against the accuracy of his assertion. This short biographical notice is to the following purport. The late Rev. JOHN BETHUNE, a native of the Isle of Skye, was educated in Aberdeen, and regularly admitted a Minister of the Scottish Church: he was invited to South Carolina, where he became pastor of a congregation; he had not been long placed there, "when discord lighted the flames of war from one end of the Continent to the other."—"In the hour of danger, his native timidity fled—he disdained temporary compliance, and boldly declared for the King. The

^k See note on page 21 of a Pamphlet bearing his name, published in 1827, in London; and entitled, "An Appeal to the friends of Religion and Literature, in behalf of the University of Upper Canada."

¹ See History, in the Annual Register for 1776, chapters iii. and vii.

public profession of his principles made him odious to the Insurgents, who treated him in the most cruel and oppressive manner. He was detained for many months a prisoner of war—he was marched on foot from Charleston to New-York, among the common captives, and no attention paid to his rank or situation—obliged to sleep on the ground, and exposed to every privation and insult; he suffered with so much Christian fortitude and mildness, as to astonish his persecutors, and his kind attention to his fellow sufferers gained their hearts and afforded him the blessing of turning many in the Prisons, where he was immured, from the evil of their ways.”

After being exchanged, he was some time chaplain to a Scottish Regiment. “On the return of Peace, he accompanied his people, many of whom from his influence and example had joined the Royal Standard, to Upper Canada.” His diligent and useful labours in the ministry, during thirty years in that Province, are then noticed, and the article concludes with the following quotation from the 37th Psalm: “Mark the perfect man, and behold the upright: for the end of that man is peace.”^m

The character and conduct of this worthy man ought to be kept in perpetual remembrance, in honour of his memory and as an example to his posterity and countrymen, both clergy and laity. It was he also, who first directed attention to Smith’s History of New-York, when the invasion of our rights in Lower Canada was first openly attempted, in 1803 or 1804.

In order to shew that, at the present day as well as in 1776, loyalty is not confined to members of the English Church, we may refer to the late events in both the Canadas. This is ably set forth in a paragraph of the Report, last February, of the Legislative Council of Upper Canada, page 10, from which the following is an extract:—“But there is nothing connected with this remarkable crisis upon which it is so satisfactory and pleasing to reflect, as the very striking proof it has afforded of the

^m See No. I, of the Christian Recorder, for March, 1819. This periodical publication was conducted by Doctor Strachan: it was printed at York, U. C., and continued for two years.

loyal and patriotic feeling of the great body of the people of Upper Canada. The instant it was known that the Government was threatened with violence, all distinctions of religion and country were laid aside, and with a noble ardour which can never be forgotten by those who witnessed it, the people rushed forward to put down rebellion, and to preserve the supremacy of the laws. While neither wealth nor station was felt to place the possessor above the common duty of opposing with arms this unnatural rebellion, the humblest inhabitant of the country gave also his services with cheerfulness—and none more so than the coloured population, whose brave, faithful, and steady conduct, have entitled them to great credit.”

The Archdeacon of York, however, seems to have argued himself into the belief that the assertion he made in 1827, was then and still is, really correct, and has acted upon that assumption. For, during these general exertions *to put down rebellion and preserve the supremacy of the laws*, his letters to Mr Morris and one to his brethren, written in a very acrimonious style, and dated from 17th November to 12th December, 1837, were issuing from the press at Cobourg. Mr Morris at first wrote him a few lines only, saying he had received the two first letters, but would delay his answer until a more fit season.ⁿ The answer is dated in January, 1838, in quite a mild moderate style, which, added to the other parts of his conduct; when put in comparison with those of the Archdeacon, make a very striking and at the same time an agreeable contrast!

ⁿ The following is the letter of Mr Morris :—

PERTH, U. C., Dec. 13, 1837.

To the Hon. and Ven. the Archdeacon of York.

SIR,

To the politeness of the Rev. Editor of the *Church*, I suppose I am indebted for Nos. 25 and 26 of that paper, which reached me last night. In them I perceive Nos. 1 and 2 of a series of letters which you are addressing to me through the medium of that journal, and this is briefly to say, that when you have completed the series, and when the enemies of our country are subdued, you shall receive a reply from,

Sir, your obt. humble servant,

WM. MORRIS.

SINCE the foregoing was written, I have observed that some of my countrymen, in urging the claims of our Church in the Canadas, make a distinction between such as were English Colonies before, and those acquired since, the Union. This is a mistaken opinion, and is in fact compromising or abandoning the Rights of our Church in the old Colonies: for the Act of Union makes no distinction, and the moment it was ratified by both nations, the names of England and Scotland were laid aside, or merged in that of Great Britain; consequently, the foreign "Dominions and Plantations" became also *British*. However, the withholding of our Rights and Privileges in Colonies acquired since the Union, may appear to many as a more glaring and a greater infringement of that solemn Treaty, than in Colonies settled or acquired by England before the Union.

Considerable newspaper discussion has recently taken place regarding an Union, supposed to be in contemplation, of all the North American Colonies; but on what plan or principles does not clearly appear, nor whether it is to be a federal or an incorporating legislative Union; or to consist partly of both. From what has been already said on this subject, it will be apparent that the writer cannot perceive any beneficial consequences likely to result from such an Union. But, he is decidedly of opinion that the Canadas should be re-united, as soon as it can be carried properly into effect: and there must also be some amendments made in the ecclesiastical part of their constitution; and a course of policy adopted, quite different from what was formerly followed in that respect. These improvements and amendments are loudly called for, in order to restore and preserve internal tranquillity and contentment in the Canadas. But, until that shall be accomplished, it is unnecessary and not satisfactory to consider or discuss more comprehensive schemes, such as a federal or incorporate Union of the British Colonies in North America.

In conclusion, it is proper to notice, what has been occasionally recommended and urged, during the last twenty years or

more, by some cool, calculating, but mistaken politicians. This is no less than that the North American Colonies cost Great Britain more than they are worth; and, therefore, the sooner they are sold or disposed of in barter for some valuable consideration, so much the better. Those who sport such opinions, forget that the United Kingdom, considering its small population compared with some other European states, and from its insular situation must depend for its wealth, safety and glory, even for its very existence as an independent state, upon "Ships, Commerce and Colonies;" for which Buonoparte so ardently wished, as the most likely means by which he hoped to vanquish and subjugate Britain, which stood between him and almost universal empire. In all that has been said on different topics touched upon in this production, I have never lost sight of what must be the heart's desire and fervent prayer of every true Briton; namely, that all the dependencies and most distant provinces of the British Empire may be preserved to her entire. And particularly in this quarter of the world, not to look "forward to the probability of a separation between these Colonies and the Mother Country within a century or three centuries, or a thousand years;"^o but, on the contrary, to use every energy and exertion to cement and preserve the connection, "as long as the sun and moon endure, throughout all generations."^p

^o Earl Durham's verbal answer to an Address presented to him at Kingston, the 20th July, 1838. His Lordship also expressed similar sentiments in written and oral replies to some other Addresses.

^p Psalm lxxii. 5.

APPENDIX, No. I.

(See page 24.)

WE subjoin the pastoral letter of his Lordship the Catholic Bishop of the Diocese of Montreal, which was promulgated in this city last Sunday.—*Morning Courier*, 31st Oct. 1838.

JOHN JAMES LARTIQUE,

FIRST BISHOP OF MONTREAL, &c.

To the Clergy, and all the faithful of our Diocese, Health and Benediction.

FOR a length of time back, dear brethren, we hear of nothing but agitation, and even of revolt, and this in a country which has hitherto been distinguished by its loyalty, its spirit of peace, its love for the religion of its fathers. On every side, we behold brothers rise up against their brothers, friends against their friends, citizens against their fellow-citizens; and discord from one extremity of this Diocese to the other, seems to have burst asunder the bonds of charity which united the members of the same body, the children of the same church, the children of Catholicity, which is a religion of unity. In circumstances of such moment, the only position that we can take, is, not merely to stand to an *opinion* (which nevertheless, as citizens, we and our worthy fellow-laborers in the holy Ministry should have, equally with others, the right of emitting), but to act up to the *obligation* which the Apostle of the Gentiles imposes upon us by saying—*Wo is unto me if I speak not the Gospel: for a necessity lieth upon me; Necessitas enim mihi incumbit. I. Cor. ix. 16.*

No, dear brethren, no one of you is ignorant of these truths;—that the duties of the different members of society form as essentially a part of Christian morality, as the duties of the different members of a family; that this divine code of morality is a portion of the sacred deposit of Faith, which has been transmitted to us by the pure channel of Scripture and Tradition; and that We, as a successor of the Apostles, are bound to transmit it to you with equal fidelity.

There is moreover nothing that can render us the object of suspicion. In our veins, as in yours, flows Canadian blood: We have given frequent proofs of the love we have for our dear and common country; and, as the Apostle, so can we take God to witness, how we long after you all, in the bowels of Jesus Christ. *Philip. i. 8.* Besides, you know that we never received anything from the Civil Government,—

as we expect from it nothing but that justice which is due to every British subject. And we bear testimony to the truth, when we solemnly protest, that in speaking to you on the present occasion, we speak of ourselves, impelled by no exterior influence, but solely actuated by motives of conscience. It is not, then, our intention to give an opinion, as a citizen, on this purely political question: among the different branches of government, which is in the right, or which is in the wrong; (this is one of those things which God has delivered to the consideration of men: *mundum tradidit disputatione eorum*;) but the moral question, namely, what is the duty of a Catholic towards the civil power established and constituted in each state? This religious question falling within our jurisdiction and competency, it is undoubtedly the province of your Bishop to give you all necessary instruction on this subject, and your province to listen to him. For, as the celebrated Laménais says, "Bishops being commissioned by the Holy Ghost to govern the church of God, under the direction of the Sovereign Pontiff, we profess that we believe that in every thing which appertains to the spiritual administration of each Diocese, clergy and laity ought, faithfully, to obey the orders of the bishop instituted by the Pope."

This, then, is what the sacred Scriptures teach you on the above question. "Let every soul," says St. Paul,—Rom. xiii. "Be subject to the higher powers, for there is no power but from God, and those that are, are ordained of God. Therefore he that resisteth the power resisteth the ordinance of God. And they that resist, purchase to themselves damnation. The ruler is the minister of God to them for good. He beareth not the sword in vain. For he is the minister of God, an avenger to execute wrath upon him that doeth evil, wherefore be subject of necessity, not only for wrath, but also for conscience sake."—Rom. i. 1, 2, 3, 4, 5. "Be ye subject therefore," adds St. Peter, the chief of the Apostles, "to every human creature for God's sake; whether it be to the King, as excelling; or to the governors as sent by Him for the punishment of evil doers, and for the praise of the good. For so is the will of God. As free and not as making liberty of malice, but as the servants of God, honour the king. Servants, be subject to your masters with all fear: not only to the good and gentle, but also to the froward. For this is thanks worthy, if for conscience towards God, a man endure sorrows, suffering wrongfully."—I. St. Peter, ii. 13, 14, 15, 16, 17, 18, 19.

Such, dear brethren, are the oracles of the Holy Ghost, as we find them in the sacred volume; such the doctrine of Jesus Christ, as the apostles Peter and Paul, had learned it from the mouth of their Divine Master. But clear as these words may be in themselves, a Christian does not interpret the word of God by his own private judgment; he knows that it is a fundamental point of his faith, that the sacred Scriptures, as St. Peter assures us, II. Ep. i: 20, are not to be understood according to each one's private interpretation; and that it belongs to our mother the Catholic Church alone to expound them to us, according to the decision of Jesus Christ in the gospel; "If he will not hear the Church let him be to thee as the heathen and the

publican."—St. Mat. xviii. 17. Now, his present Holiness, Gregory XVI. has expounded from his pontifical chair, these passages of Scripture. He has interpreted the passages which we have cited from the sacred volume, according to the doctrine of the Holy Fathers, and the perpetual tradition of the Church, from its establishment down to the present day: he has dictated their true meaning to the Christian world, in his Encyclical letter, addressed in the beginning of his Pontificate, to the Bishops in every part of the world. Not a solitary Bishop since that period has raised his voice against the doctrine of that letter, so that it has received at least the tacit consent of the great body of Pastors, and consequently, it must be looked upon as an authoritative decision in point of doctrine.

"As we have learned," says the Holy Father, (it is not our voice that you are now going to hear, but that of the Vicar of Jesus Christ,)—"as we have learned that writings disseminated among the people proclaim doctrines which shake the fidelity and submission due to Princes, and cause the standard of revolt to be raised on all sides, it becomes necessary to use every precaution to prevent deluded multitudes from being drawn out of the line of duty. Let all bear in mind, according to the advice of the Apostle 'that there is no power but from God; and therefore he that resisteth the power, resisteth the ordinance of God: and they that resist purchase to themselves damnation.' Both human and divine laws rise up in condemnation of those, who, by schemes of sedition and revolt endeavour to shake allegiance to Princes, and hurl them from the throne. It was for this reason, and in order to avoid sullyng themselves with such a crime, that the first Christians, amidst the fury of persecution, remained faithful to the Emperors, and sought, as it is certain they did, the interests of the empire. Of this they gave abundant proofs, not only by faithfully executing every order that was not contrary to religion, but by shedding their blood on the field of battle. The Christian soldiers, says St. Austin, (in Psalm 124, No. 7) served a Heathen Empire: but when there was question of the cause of Jesus Christ, they acknowledged only Him who reigns in Heaven. They distinguished eternal from their temporal Lord: and yet for the sake of their eternal Lord, they were submissive to their temporal one. This it was that the invincible martyr St. Mauritius, commander of the Theban legion, had before his eyes, when, as St. Encherius relates, he answered the Emperor:—We are your soldiers, Prince, but we are at the same time the servants of God; and now, even the danger of losing our lives, with which we are threatened, does not induce us to revolt. We have our arms in our hands, and we resist not; because we prefer to suffer death rather than to inflict it. This fidelity of the Christians of old acquires new lustre, if we remark with Tertullian, that they were deficient neither in number nor in power, had they chosen to declare themselves enemies to the state.

These splendid examples of inviolable submission to Princes, which were the necessary consequences of the precepts of the Christian religion, condemn the error of those who, infatuated with the love of unbridled liberty, direct all their efforts against the rights of authority,

“whilst, upon the people, they entail only slavery under the mask of liberty. Such was the tendency of the evil designs of the Waldenses, of the Beguards, of the Wickliffites, and of others against whom the anathemas of the Apostolic See have been so frequently directed; and they who walk in their footsteps, have no other object in view but to boast with Luther, that they are free from all control of persons and of things.”

“It is on your part an obligation of duty,” adds the same Pontiff, in his brief of July 1832, to the bishops of Poland, “it is on your part an obligation of duty to watch with the utmost care, lest evil-minded men, propagators of false doctrine, spread among your flocks the contagion of demoralising theories. These men, with zeal for the public good in their mouths, impose upon the credulity of simple men, who blindly become their tools in disturbing the public peace and overthrowing the established order of things. For the good, and for the honor of the Disciples of Jesus Christ, it is fitting that their false doctrines should be exposed: the falseness of their principles must be shown by the immutable word of the sacred Scriptures, and by the indisputable monuments of the Tradition of the Church.”

Such is the doctrine of the supreme Pastor of souls, of the venerable Pontiff now sitting on the eternal chair, in conjunction with the documents of the Church in all ages and in all places. You must now feel, dear brethren, that we could not, without violating our duty, and endangering our personal salvation neglect the direction of your consciences in circumstances so critical. For as a Catholic cannot pretend to choose what point of faith he will admit, and what point he will reject: and as St. James says, (Ep. ii. 10,) “he who offends in one point, is become guilty of all,” the present question amounts to nothing less than this—whether you will choose to maintain or whether you will choose to abandon the laws of your religion. Should then any one wish to engage you in a revolt against the established Government, under the pretext that you form a part of the *Sovereign People* suffer not yourselves to be seduced. The too famous National Convention of France, though obliged to admit the principle of the Sovereignty of the people, because it was to this principle that it owed its existence, took good care to condemn popular insurrections, by inserting in the *Declaration of Rights* which heads the constitution of 1795, that the Sovereignty resides, not in a part, not even in the majority of the people, but in the entire body of the citizens: adding *that no individual, that no partial union of citizens can pretend to the Sovereignty.* But who will dare to say, that in this country the totality of citizens desires the overthrow of the Government?

We conclude, dear brethren, by appealing to your noble and generous hearts. Did you ever seriously reflect on the horrors of a civil war? Did you ever represent to yourselves, your towns and your hamlets deluged with blood, the innocent and the guilty carried off by the same tide of calamity and wo? Did you ever reflect on what experience teaches, that almost without exception, every popular revolution is a work of blood? Did you ever reflect that even the Philosopher of Geneva, the author of the *social contract*, the great

upholder of the Sovereignty of the people, says himself, that a revolution which cost only one drop of blood, would be too dearly bought? We leave these important reflections to your feelings of humanity, and to your sentiments as Christians.

“The Grace of our Lord Jesus Christ, and the charity of God, and the communication of the Holy Ghost be with you all.”—II. Cor. xiii. 13.

This charge shall be read and published at the Parochial or principal Mass of each Church, in chapter by each community of our Diocese, on the first Sunday or Festival after its reception.

Given at Montreal, the 24th Oct. 1837.

JOHN JAMES LARTIQUE, *Bishop of Montreal.*

No. II. (See page 33.)

DECLARATION OF THE VIEWS AND MOTIVES OF THE LOYAL CANADIAN ASSOCIATION OF MONTREAL.

(From Morning Courier, March 17, 1838.)

ENCOURAGED by the rapid extension of the LOYAL CANADIAN ASSOCIATION, and impelled to action by the unjust pretensions of a small portion of our co-subjects of British origin, who, in the avowed hope of wresting from the majority of the inhabitants of this country all Constitutional influence, eagerly seize upon the false position in which the deplorable attempts of a few of our fellow-countrymen have placed us, to assail our institutions with bitter violence and evident dishonesty; relying with the utmost confidence on the benevolence of our august and well-beloved Sovereign, and on the justice of her Government, and convinced that upon our zeal to defend our religion, our laws and customs, must depend the maintenance and preservation thereof in this Province, the Committee of the Loyal Canadian Association for the City of Montreal, while they eschew all prejudice, jealousy, and repugnance, and appeal to the true friends of the country, inviting them, in the interest of all, to unite their efforts to those of the Association, deem it their duty to declare publicly, and in detail, the motives which have given birth to this Association, as well as the views, for the furtherance of which it was formed.

It cannot be denied that there still exists a great number of abuses which weigh heavily upon all the inhabitants of this Province, and retard its progress and prosperity.

Hitherto there has been too great an adherence to discussions both idle and evenomed by party feeling, on matters which were assuredly

not the principal cause of the political disquiet under which the country languished.

The woful experience we have recently had, of the consequences of such aberrations from a wise policy, should engage every good citizen to return to better principles, and abandon all secondary views, to apply their energies solely to the leading interests of the Province.

The leaders of the Reform party have for some years past, strangely mistaken their mission. They have lost sight of those improvements which it was in their power to effect, and only laboured to introduce doubtful theories which if reduced to practice, might have been accompanied by disadvantages of the most serious nature; and having once passed certain limits, they could not stop until their ever increasing exactions hurried them into the excesses which have all but annihilated our liberties, and well-nigh blotted out all hope of ever attaining a state of reasonable reform.

While thus divulging their views with reference to those unfortunate circumstances which, with others hereafter alluded to, have contributed to bring on the crisis we have of late experienced, the Committee do not mean to try the past at their tribunal, but solely to indicate its faults and make it be understood that their aim will ever be to avoid all errors of a similar nature.

One of the causes, nay, the first and principal cause, of all the evils which have afflicted the country, has been the constant opposition and extravagant pretensions of a small portion of our fellow-subjects, who, priding themselves on a particular origin, have ever refused to form one people with us.

Too long the objects of a system of odious favouritism, these men became persuaded that they were alone entitled to all offices, honours and advantages, at the disposal of Government, and have ever sought to exclude our fellow-countrymen from the administration, and endeavoured by dint of calumny to prolong the existence of that place-speculation which they had set on foot with so much advantage to themselves.

The existence of this faction, and of the abuses perpetuated by it, gave birth to that Reform party, whose opposition was long sustained in a spirit of generous and honourable patriotism.

Unfortunately the violence, the precipitation, and more especially, the extravagant pretensions of some of their leaders, have, of late years, perilled the reforms already effected, as well as those which might have been subsequently obtained.

The deplorable events which have recently occurred have afforded a triumph to that faction which it was essential to repress, and we now behold it seizing upon isolated transgressions to make them appear general, in order to obtain the overthrow of all the institutions we hold from the capitulation and the benevolence of our late august Monarch George III. of glorious memory.

But the Reform party is not annihilated by the errors and the fall of a few individuals. Its spirit will ever be found in the midst of the inhabitants of this country of every origin, who profess that true

liberalism which consists in the exercise and maintenance of equal rights.

It is this numerous class of our fellow-subjects, to whom the Committee of the Loyal Canadian Association do appeal this day, calling upon them to rally round the happy Constitution which we possess, and which assures to every man the same extent of liberty, and the free exercise of his language and his religion.

Amongst the various reforms we should aim at, in order to effect a regeneration of this country, some depend on the Mother Country, by whom, as we have every reason to believe, our solicitations to obtain them, will, in the interest of her colony, be most favourably received; others are within the power of our local Legislature to effect, and the people of this Province may obtain them by directing their attention toward the choice of their Representatives.

Amongst those of the first class we may designate:—

1stly.—The composition of both Councils, Executive and Legislative, the nomination of whose members should remain with the Crown, but accompanied by such guarantees as would effectually prevent the evils often occasioned by those bodies in the conduct of public business. It is by continuing to reform them, and especially by effecting that reform in accordance with the spirit which dictated the Constitution of 1791, that we may at length succeed in restoring harmony to administrative action, and in putting an end to those party contentions which have been so baneful to the interests and prosperity of the public.

2ndly.—The accumulation of offices which has tended solely to create bitter jealousies, and to maintain a number of sinecurists who are ever opposed to all improvements which may affect their interests.

3dly.—The reservation to the Provincial Legislature, of the right of appropriating the revenue on condition that a civil list be granted to ensure the service of the civil and judicial administration of the country.

4thly.—The appointment of Judges for life, in order to give them that degree of independence which they have not now, but with which they should be invested for the interests of justice; subjecting, however, such appointments to certain restrictions of good conduct and integrity.

5thly.—The creation of a tribunal to take cognizance of, and adjudge upon, crimes committed by public functionaries.

Amongst those of the second class, we would indicate:—

1stly.—Certain modifications in our system of Judicature, which, owing to the increase of population and the spread of new settlements, now rests upon a basis both insufficient for, and ill adapted to, the requirements of the country, and exposes persons located at a distance to an expense so ruinous as to amount, in many cases, to a denial of justice,—not omitting in this reform that of the Court of Appeals, which is constituted in such a manner as to render it incapable of accomplishing the object of its institution.

2dly.—A revision of the laws relating to Feudal Tenures with a view to abolish those enactments which tend to affect the increase of

property and to fetter industrious enterprise; without sacrificing however the interests and actual rights of either the Seigneur or the Censitaire.

3dly.—A modification also of the laws regulating the customary Dower, which often occasions the ruin of families, and prevents numberless transactions from being advantageously concluded.

4thly.—The establishment of an hypothecary system which would protect at once the proprietor and the creditor, and allow capital to rest safely upon a certain pledge.

5thly.—Commercial laws, better calculated to regulate and secure the interests of trade, as also mutual arrangements with the sister Province to facilitate as much as possible, her commercial communications with us. By extending and strengthening the chain which binds the commercial interests of the two Provinces, a new vigor will be infused into trade and agriculture, which are the principal sources of a country's wealth.

Such are, with others of a minor importance, the reforms towards which the attention of the Association will be especially directed, in the hope of removing the obstacles which have impeded the prosperity of this country, and which, notwithstanding the advantages it should have derived from its extent, its salubrious climate, its extreme fertility, and, more especially, from the character of its inhabitants, who claim descent from the two nations which stand highest in the scale of European civilization and industry, have hitherto, nevertheless, prevented it from rising to a level with the countries which surround it.

In accordance with the views and sentiments of the Loyal Canadian Association as above set forth, its objects will therefore be:—

1stly.—To labour earnestly towards the restoration of union and concord among all her Majesty's subjects in this Province; such concord and union being the sole basis upon which the prosperity of all can be made to rest.

2ndly.—To oppose all party excesses and all doctrines tending to subvert public morals or public order.

3dly.—To propagate all doctrines calculated to ensure the happiness of the people, or to strengthen and enlarge their institutions.

4thly.—To exert all its influence toward the encouragement of the agriculture, manufactures and trade of the country, and also toward the extension and improvement, not only of its interior communications, but of those likewise which are called for by its relations with the neighbouring Provinces.

5thly.—To labor toward the diffusion of the blessings of education amongst all classes of the people, the extent of whose knowledge, with reference to the mutual bonds of society, is their sole rule of moderation, and can alone ensure the quiet and facilitate the progress of Government.

6thly.—To maintain with all its power our union with the Mother Country, and a just subordination to her authority.

7thly.—And finally, to guard, with the strictest vigilance, the preservation of all the rights, liberties and privileges which are guaranteed by the Constitution to the people of this Province, and with this aim

before it, to oppose with all its energy, every demand tending to a reunion of the two Provinces, which would have the effect of destroying all those advantages, and would plunge this Province, for an unlimited period, into a state of disorder and confusion.

PIERRE DE ROCHEBLAVE, *President.*

H. GUY,
H. E. BARRON, } *Secretaries.*

Montreal, February 1, 1838.

No. III. (See page 38.)

THE Deputies from the revolted Colonies, who met in General Congress at Philadelphia, in September, 1774; among other proceedings, framed an Address to the Canadians, to induce them to join the other colonies. The substance, which is too long for insertion here, is given in the Annual Register, for 1775. In that able and respectable publication, this address is characterized as follows.

“Of all the papers published by the American Congress, their address to the French inhabitants of Canada, discovers the most dexterous management, and the most able method of application to the temper and passions of the parties, whom they endeavour to gain.”

In the historical part of the Annual Register, for 1776, it is stated that when the provincial forces entered Canada by Lake Champlain, the preceding year, parties were spread over the country adjacent to St. Johns, and were every where received with open arms by the Canadians, &c. However, it appears in the same page that there were about 200 Canadian volunteers in St. Johns as part of the garrison, under the command of Major Preston, who was forced to capitulate, after a brave defence. General Carleton (afterwards Lord Dorchester) got together near a thousand men at Montreal, composed principally of Canadians, intended for the relief of St. Johns. This party was repulsed by the Provincials, in attempting to land at Longueuil. Another party near Sorel, under the command of Colonel McLean, hearing of the Governor's defeat, the Canadians left him and he was obliged to make the best of his way to Quebec with the emigrants, a newly raised corps.

When Arnold with his party arrived near Quebec, through the woods, by the river Chaudiere, the Canadians received them with the same good will that Montgomery's corps had experienced in the neighbourhood of Montreal, &c. &c. “Arnold immediately published an address to the people, signed by General Washington, of the same nature with that which had been before issued by Schuyler and Montgomery. They were invited to join with the other colonies in an indissoluble union. To range themselves under the standard of general liberty.” &c. &c. Notwithstanding the favourable reception

of Montgomery and Arnold, and the addresses, signed by General Washington, which they published; yet in the City of Quebec, "the discontented inhabitants, English and Canadians, as soon as danger pressed, united for their common defence. They became seriously alarmed for the immense property which Quebec contained. They desired to be, and were, embodied and armed." It is remarked that Arnold's only hope against Quebec must have been the defection of the inhabitants; and being disappointed, he drew off his detachment into quarters of refreshment, until Montgomery's force should join him. In the mean time the Governor, General Carleton, arrived safely from Montreal. "His first act was to oblige all those to quit the town with their families, who refused to take up arms in its defence."

It appears from Smith's History of Canada, and other sources of information; that, though many of the Canadians joined the rebels, or furnished them with provisions, &c. when they invaded the Province; yet no men of any note were of the number, and in defending the city of Quebec they were not behind the old subjects in zeal and bravery. Mr Beaujeu is mentioned, as having embodied a party of Canadians, somewhere in the country, with a design of raising the siege; but on their march, they were encountered and dispersed by the rebels. Smith inserts in his History, a very particular and interesting Journal of the Siege, kept by an officer of the garrison.—The gallant conduct of Monsieur Dambourges, with Major Nairn, is there particularly mentioned, on the morning of 31st December, 1775, when the rebels attacked the garrison. It is also stated in the Journal. "The French militia shewed no backwardness; a handful of them stood the last at Sault au Matelot; overcome by numbers, they were obliged to retreat to the barrier." In the beginning of April, 1776, sixty Canadians, headed by Mr Bailly, a priest, armed themselves, intending to surprise the guard at Pointe Levi, and then join the King's friends in Quebec. A villain informed the rebels of the plan, which prevented its success. In the engagement that ensued six rebels were killed, five loyal Canadians fell, thirty-four were taken prisoners, and the priest was dangerously wounded. The siege was raised on the sixth of May, by the arrival of reinforcements from home, and on the seventh the journalist, among other incidents, states, "this morning many priests have come to town from the adjacent parishes, with cheerful countenances, to pay their respects to the governor, and make their obeisance to the bishop. Their distinguished loyalty will ever redound to their honour; a great number of people are flocking into town, many with guilty faces. The peasants, with their eyes on the ground, come sneaking in, with a few eggs, milk, butter, &c. meanly cringing and submissive, conscious that their base conduct merits chastisement," &c.

We may also notice the Report of the Legislative Council of Upper Canada, on the state of the Province in February, 1838; in which the loyalty of the Canadians is acknowledged at the time they were invaded by the revolted Colonies. At page 27, after having mentioned the Act of 1774, which restored to the Canadians their peculiar code

of laws, "in all matters relating to property and civil rights," the Report adds, "what might have been the conduct of the Canadians under other treatment, we can only conjecture; but it is certain, that the efforts which were afterwards made by the revolted Colonies, to allure them into their confederacy, were unsuccessful, and that in general, the population of Lower Canada remained faithful to the Royal cause."

THOSE who are old enough to remember the Revolution in France, and the war which began with that nation in 1793, will recollect with horror the proceedings that we every day heard of from that ill-fated country. The sanguinary revolutionists spared neither age nor sex; the ministers of religion were massacred, the Christian Sabbath was abolished, death was decreed to be an eternal sleep, &c. And, this having been formerly a French colony, great exertions were made to *revolutionize* the province, and confer upon the inhabitants the blessings of *liberty and equality!* For this purpose emissaries were at different times sent in from the United States, by the French minister at Philadelphia (then the seat of Government) to the great alarm of the peaceable and well-disposed people of Canada. There is no doubt that we were very much indebted to the influence and exertions of the Roman Catholic Priesthood for our escape from such *liberty*. This is so evident to those who were here at the time, as hardly to require any proof. It may, however, be proper to mention, that one of these emissaries was brought to trial for High Treason and executed at Quebec, in July, 1797. In his plan to "overthrow the present existing Government," he counted upon the assistance and co-operation of a French fleet and troops; the first object was to secure the money and valuable property, for defraying the expenses of the war, "and then effectually to secure all the priests and leading characters in the Province."* This shews that McLane and others, who formed the plan of overthrowing the present existing Government, were well aware that they had no chance of success, unless *all the priests were first effectually secured.*

THE war with the United States, which was begun by them, in 1812, is of such recent date that many persons are still living who must distinctly remember with what alacrity the inhabitants in general, of different races and different creeds, turned out to defend the country. This is well described by William James, in his work entitled "Military Occurrences," in two volumes. It cannot be doubted that the clergymen were as zealous and active as their flocks; though their exertions, being of a more retired nature than the field of battle, are not so likely to be noticed and recorded by the historian. However, one example to the contrary is spoken of, with applause, to this day,

* See the evidence on David McLane's trial at Quebec, the 7th July, 1797; particularly that of Elmer Cushing.

of a Roman Catholic Clergyman (now a Bishop) who publicly encouraged and stimulated the spirit of the militia, at the attack on Ogdensburgh, in February, 1813.

It is not out of place here to refer to the inhabitants of Jersey, Guernsey, &c. who are descended from Frenchmen; and, though they have retained their language with many of their laws and customs, yet they have on several occasions given convincing proofs of their bravery, loyalty and attachment to the British Sovereigns. The property of Jersey "belonged formerly to the Carterets, a Norman family, who have been always attached to the royal interest, and gave protection to Charles II., both when King and Prince of Wales, at a time when no part of the British dominions durst recognise him."* Jersey was attacked by a large French force, in 1779; which "met with such a vigorous resistance from the militia of the island, assisted by a body of regulars, that they were compelled to retire without having landed a single person." Another unsuccessful attempt was made by France, in 1781, to take this island. A considerable force was landed unexpectedly and gained some advantages by surprise, but were soon overpowered and forced to surrender themselves prisoners of war, to the number of eight hundred, not one of those who landed having escaped.† From the former good conduct of the French Canadians, as they are sometimes called, is it not reasonable and may we not expect the same devoted bravery and loyalty from them at some future day, if the occasion should ever require it, provided a different and more judicious line of policy be adopted and continued towards them?

No. IV. (See page 50.)

MR HAGERMAN'S SPEECH ON THE CLERGY RESERVE BILL,—
THIRD READING, 4TH MARCH, 1835.

THE SOLICITOR GENERAL commenced by expressing his sense of the obligations he felt himself under to the house for having yielded to his request, to defer the third reading of the bill until this day, to enable him to offer the observations he had to make against its adoption, and which, owing to the measure having been brought up out of the ordinary course, he was unprepared to do the day before yesterday. The question, it would be admitted, was one of very great im-

* Guthrie's Geography, London edition of 1788.

† Ency. Britannica, 4th edition. Also Edinburgh Gazetteer, printed in 1822: both under the article JERSEY.

portance, involving, as it did, the existence of the Established Church, so far as its existence depended on the public support assigned it by the Constitution; and therefore it was most desirable that it should be calmly and dispassionately considered. For himself he no longer considered it a party question—it was one on which men of unquestionable intelligence, integrity, and loyalty were found to disagree, and it must, therefore, depend on the force of truth and argument which was right and which was wrong. He should, with as much brevity as possible, and he hoped for the last time, go over the prominent objections raised by gentlemen, for whose opinions he entertained respect, against the exclusive appropriation of the Reserves to the support of the Established Church, and he should do so without any desire to offend, and he hoped in a manner to free him from any such reproach.

In the first place it had been contended, that the Established Church of England was not the Established Church of this Province, and although he believed that this opinion was not generally entertained in this country, and he believed, was repudiated by all dispassionate and well informed persons, he would enter upon its investigation, believing, as he did, that it had not hitherto undergone much discussion. For my own part, said Mr Hagerman, I have not the shadow of doubt upon the subject; and in order the more clearly to explain the grounds of my opinion, I beg, in the first instance, to call the attention of hon. members to the state of the Church anterior to the Reformation. It will be recollected, that at that time the Roman Catholic religion prevailed, and was the only recognized religion throughout the Christian world, and that the Pope claimed to be at the head of the Church, exercising unlimited sovereignty over it.—Henry VIII., for reasons not now necessary to advert to, denounced the exercise of this sovereignty within his dominions as an usurpation, declared that he was the head of the Church within his dominions—and denounced entirely the pretensions of the Pontiff. To secure the right thus asserted by Henry, the Parliament of England, in the 26th year of his reign, passed an act, chap. 1, declaring, that “the King shall be taken, accepted, and reputed the only supreme head *on earth* of the Church of England, and shall have and enjoy annexed and united to the Imperial Crown of this realm as well the style and title thereof as all honours, dignities, jurisdiction, authorities, &c. &c., to the said supreme head of the same church, belonging, &c.; any usage, *foreign law* or authority, to the contrary notwithstanding.” Now what was the foreign authority here referred to? Of course that of the Pope; and how far did this authority extend? As has been said before, throughout the Christian world; and, therefore, Henry assumed for himself and his successors that same authority throughout that portion of the world then belonging to, or which might afterwards belong to the Crown of England. Passing by the acts passed in the reign of Edward and Mary, the next statute which I shall advert to is the 1st Elizabeth, chap. 1, in sec. 16—it is enacted, that “no foreign prince, person, prelate, state, or potentate, spiritual or temporal, shall at any time *after the last day of this Session of Parliament,*

use, enjoy^{or} exercise any manner of power, jurisdiction, superiority, authority, pre-eminence or privilege, spiritual or ecclesiastical within this realm, *or within any other your Majesty's dominions or countries that now be, or hereafter shall be, &c.*" And by the next section, the 17th—it is "established and enacted that such jurisdictions, privileges, superiorities, and pre-eminences spiritual and ecclesiastical, as by any *spiritual or ecclesiastical person or authority* hath *heretofore been*, or may lawfully be exercised or used for the visitation of the *ecclesiastical state and persons*, and for reformation, &c., shall for ever be united and annexed to the imperial crown of this realm." Here again it is to be asked, 1st. *What spiritual or ecclesiastical power* existed before the passing of this act? The answer is, that of the Pope, the same having been restored to him in the preceding reign of Mary. 2nd. What was the nature and extent of this power? It was the direction, controul and superintendence of the Church throughout the world; and this power, by this act, was taken from the Pope and annexed to the Crown of England, and declared to extend throughout the Empire and its then dependencies, as well as to such others as might *afterwards* be acquired. I shall now advert to the Act of Union of England and Scotland, which, of itself furnishes arguments that stand in need of no assistance from other sources to prove the correctness of the position I have advanced. 5th Anne, c. 8, it is enacted, that the Protestant religion contained in the Confession of Faith, and Presbyterian Church government, shall be the only government of the Church *within the kingdom of Scotland*; and by the same statute it is enacted, that the Protestant religion professed and established by law in the Church of England should be unalterably secured according to the laws and statutes having reference to the same, and that every *succeeding sovereign* coming to the Crown of Great Britain should, at his or her coronation, swear to maintain the same within the kingdoms of England and Ireland, the dominions of Wales and Town of Berwick-upon-Tweed, and the *territories thereunto belonging*. It has been argued by some hon. gentlemen, that this oath relates to territories that at the time of passing the Act belonged to the Crown of England—the fallacy of this argument, however, is apparent upon a moment's reflection. The act declares that all succeeding Sovereigns as Kings or Queens of Great Britain shall take the same oath, viz: to preserve and maintain the Established religion within the kingdoms of England, Ireland—the territory of Wales, Town of Berwick-upon-Tweed and territories thereunto belonging; an oath which George III., his successor or his present Majesty have taken, without excepting territories acquired since the Act of Union. Having thus noticed Acts of Parliament which apply to the Empire generally; I will next advert to a few that have reference to this country, and which clearly point out the Church of England as the Established Church here, and show that the act of Elizabeth above was considered as in force in Canada.

The first statute conferring a settled form of government on Canada, is the 14th Geo. III. chap. 83. The 5th section of this act secures to His Majesty's Roman Catholic subjects the free exercise of their

religion, subject to the King's supremacy, declared and established by an act made in the first year of the reign of Queen Elizabeth, over all the dominions and countries *that then did or thereafter should belong* to the Imperial Crown of this realm." And the 7th section of the same statute substitutes an oath to be taken by Roman Catholics, in lieu of that required by the before-mentioned statute of Elizabeth. Now, it strikes me that nothing can more clearly prove that the British Parliament held that the Church of England was the Established Church of Canada than this act; if otherwise, the statute of Elizabeth could not apply to its inhabitants, and if it did not apply, there was no necessity for relieving them from taking the oath prescribed in it, to be taken by persons assuming office.

The next statute I shall refer to, is one of which we are in the habit of speaking in exalted terms, is the act conferring on us our Constitution—that constitution in virtue of which we are authorized to sit and deliberate as representatives of the people, in a Legislative Assembly. The 38th section authorizes the Governor to erect and endow one or more parsonages or rectories as he may think fit, according to the establishment of the Church of England. The 39th section authorizes the Governor to appoint to every such parsonage or rectory an incumbent, a Minister of the Church of England, who shall have been duly ordained according to the rites of said Church. The 40th section enacts, "That every such presentation of an incumbent or minister to any such parsonage or rectory, and also the enjoyment of any such parsonage or rectory, and of the rights, profits, and emoluments thereof by any such incumbent or minister, shall be subject and liable to all rights of institution, and all other spiritual and ecclesiastical jurisdiction and authority which have been lawfully granted by His Majesty's *letters patent* (not by act of Parliament,) to the Bishop of Nova Scotia, or which may hereafter, by *His Majesty's Royal authority*, be lawfully granted or appointed to be administered and executed within the said Provinces, or either of them respectively, by the said Bishop of Nova Scotia, or by any other person or persons according to the laws and canons of the Church of England, which are lawfully made and received in England." Lastly, the 42d section enacts, "That any acts of the Legislature of either Provinces, which shall in any manner relate to or affect the *establishment or discipline* of the *Church of England*, amongst the ministers or members thereof, shall be laid on the table of both houses of Parliament thirty days before the King himself shall assent to them. Now these sections of the constitution prove incontestably one of two things, either that the Church of England was the established Church in Canada before that act was passed, or, that by it that Church was *then established*, it being declared that all the laws and canons of the Church of England should be in force, and binding on the clergy. But there is no question whatever but there was no necessity for passing this act to establish the Church—its enactments were intended to authorize the Governor to divide the country into parishes and rectories—to provide for their endowment, and to confer on him the power of presenting incumbents to such parsonages and rectories

when endowed. The Church of England was already established, it was a consequence of Canada becoming one of the territories belonging to the British Crown, and the only object of the statute was to give effect to its usefulness. The power and jurisdiction of the Bishop of Nova Scotia was founded on no statute, it proceeded direct from the Crown, and before the 31st, Geo. III. was passed, he exercised the spiritual power of Bishop of the established Church in Canada, in the manner declared in the 40th section.

Having thus remarked upon the different British Statutes relating to this subject, I will next advert to some of the acts of His Majesty and his government, shewing the light in which they regarded the subject. In the first place, by what authority did His Majesty authorize the installation and appointment of a Bishop to the Diocese of Quebec, if the power did not belong to him as the head of the church which he had sworn to maintain throughout all his dominions; and having exercised this power, under what law does the Bishop act, and from what laws does he derive his ecclesiastical power? Clearly from the laws and canons of the Church of England, which declare the Church of England to be the established Church throughout the British dominions.

The next evidence I shall advert to is one that I do not attach so much importance to as others may be inclined to do, but I will advert to it as being explicit of the views of the great statesman who introduced the 31st, Geo. III. into the House of Commons, I mean Mr Pitt. I am aware that it has been supposed by many, that the late Lord Grenville was the author of this act—such is not the case—he had nothing more to do with it than any other member of the cabinet; like all other acts of a similar description, it was originally drawn by the law officers of the Crown, undergoing many changes before it was finally adopted. When the clauses relating to the Church came under discussion, Mr Pitt in explanation of the object to which the reserves were to be applied, made use of these words, “The meaning of the act was, to enable the Governor to *endow*, and to present *the Protestant Clergy of the Established Church* to such parsonage or rectory as might be constituted or erected within every township or parish which now was or might be formed, and to give to such Protestant Clergyman *of the Established Church* a part or the whole, as the Governor thought proper, of the lands appropriated by the act.—He further explained, that this was done “to encourage *the Established Church*, and that possibly hereafter it might be proposed to send a Bishop of the established Church to sit in the Legislative Council.”

Nothing can be more explicit than this language, shewing, first, that it was considered as of course that the Church of England was the Established Church in Canada, and secondly, that the reserves were intended solely for its support. Mr Fox and Mr Dundas were both present, and neither of them denied the accuracy of Mr Pitt's statements or views. Mr Fox contended against the expediency of the provision, alleging that either the Roman Catholic or the Presbyterian religion should be the established religion,—he however did not con-

tend that that of England was not so,—and Mr Dundas urged nothing in opposition. I however will defer further remark upon the tendency of these debates until I come to another branch of my argument, and will now proceed to a last, and, what ought to be with us, a conclusive proof in favor of the right of the Church of England to be considered as the established church of these Provinces,—I mean the acts of our own Provincial Legislature.

The first of these is the 33, Geo. III. chap 2, and the first act passed to provide for the nomination and appointment of *Parish* and *Town* officers; and it is somewhat remarkable that in the bill recently introduced into this branch of the Legislature, no notice whatever has been taken of the enactments I am about to notice. By the 7th section of the act mentioned, it is provided that the inhabitant householders of the *parish*, township, or place, shall at their town meetings choose and nominate two fit and discreet persons to serve the office of *Town Wardens* for such *parish*, township or place: but as soon as there shall be any church built for the performance of divine service “according to the use of the Church of England, with a parson or minister duly appointed thereto, then the said inhabitant householders shall choose and nominate one person, and the said parson or minister shall nominate another person, which persons shall jointly serve the office of *Church Wardens*, and that such *Town Wardens* or *Church Wardens and their successors* shall be as a *corporation*,” &c. Looking to this act only, (if there are not many others of equal importance,) nothing could more clearly demonstrate the understanding of the Legislature that the Established Church of England was the Established Church here; and that when parsons and Church Wardens were once appointed to any *parish* or place, they became as in England a corporation. This was assumed,—such a law conferring the same distinction on any other religious body was never so much as thought of; and in confirmation of this opinion, I will next advert to the act passed in the same session of the Legislature, viz. 33, Geo. III. chap. 5. This act was passed to confirm marriages that had previously been contracted within the Province, and to provide for the future solemnization of marriage within the same. What says the preamble? Why, that “whereas many marriages have been contracted in this Province at a time when it was impossible to observe the forms *prescribed by law*, (what law?) *by reason* that there was no *Protestant parson or minister duly ordained* residing in any part of the said Province, *nor any consecrated Protestant church or chapel* within the same; and whereas the parties having contracted such marriages, and their issue *may therefore* be subject to many disabilities,—to quiet the minds,” &c. Now this preamble admits that there then were Protestant parsons or ministers duly ordained, who were authorized to solemnize marriage within any consecrated Protestant church or chapel; and who they were, is clearly enough designated by the reference to consecrated churches or chapels, within which only, according to the *laws of England* at that time, could marriages be solemnized,—and there *only* by ministers duly ordained according to the rites and forms of the Church of England; and this

interpretation is rendered even more clear by the subsequent parts and enactments of the same law, which confines the confirmation of marriages therein referred to, to persons who were under no *canonical* disability to contract matrimony. The *canons* of the Church of England, or such as were adopted by it, no reasonable man will dispute were these here referred to; thereby admitting their validity within the Province. Again, the same statute, for the purpose of facilitating the contracting of marriage in the Province, admits of the ceremony being performed *according to the form prescribed by the Church of England* by a Justice of the Peace, when neither of the parties reside within eighteen miles of any parson or minister of the *Church of England*; but so soon as there shall be *five parsons or ministers of the Church of England* severally incumbent or *doing duty* in their respective parishes or *places of residence* within any one district, then the authority given to the Justice of the Peace should cease. No notice of the existence of the ministers of any other denomination is taken here; and why are the ministers of the Church of England thus distinguished?—obviously because they were the ministers of the Established Church; and when resident within any district to the number of five or more, their right to solemnize marriage should supersede all others;—it was never thought necessary to make a like exception in favor of any other class of ministers. I shall now shortly advert to the acts passed authorizing the solemnization of marriage by ministers of other persuasions than those of the Church of England. The first of these is the 38, Geo. III. chap. 4, and that passed in the present reign extending the provisions of the former. It is enough for me to ask, when it was thought necessary to pass any law authorizing ministers of the Church of England to solemnize marriage in the Province of Upper Canada? No such act was deemed requisite because the Church of England is the Established Church throughout the British dominions, (Scotland excepted) and therefore its ministers carried with them the power wherever they went within those dominions to solemnize marriage, in virtue of their ordination. Not so with respect to the ministers of any other denomination, and so thought the Legislature of this Province, and therefore it passed the laws in question—*incomplete nevertheless, the revision of which, I most earnestly recommend to those who are interested in their efficiency.*

The last act of our Legislature which I shall notice is one which, so far as it respects its bearing upon this question, is the most important of all—I mean the act “relative to the right of tithes within this Province” and which became a law in 1823—having been reserved for the signification of His Majesty’s assent, and being one of the description of bills which by the constitution it was necessary to lay upon the table of both Houses of the Imperial Parliament, before such assent could be given. This act declares that “notwithstanding one seventh of the lands granted in the Province had been reserved for the support of a *Protestant Clergy*, doubts had been suggested that the title of the produce of land might still be legally demanded by *the incumbent duly instituted, or Rector of any Parish*, and it is therefore enacted, That no tithes shall be claimed, demanded or re-

ceived by any ecclesiastical parson, rector or vicar of the Protestant Church, within this Province." Now this act plainly establishes two points; first, that the reserved lands were in lieu of tithes, and secondly, that they were set aside for the Clergy of the Church of England, they only being known or designated as parsons, rectors, or vicars.—Further comment on the various statutes must be considered superfluous, and I shall now pass to the last head of this branch of my argument, by merely mentioning what will not, I believe, be denied by any lawyer, that to libel, or attempt to bring into disrepute the Liturgy of the Church of England is an indictable offence, while in like manner to treat the Confession of Faith of the former or doctrines of any other Christian sect, (unless some scandal is thereby brought on the Christian religion) cannot find the like protection any where out of Scotland. And why is this? Because the Liturgy of the Church of England is recognized and established by law throughout the British dominions (Scotland excepted), and is therefore protected from contempt or derision, in the same manner that the authority, power, and supremacy of the Crown is protected from insult or seditious attack. The truth is, that wherever the authority of the King of England extends, (Scotland excepted) the existence and pre-eminence of the Church of England accompanies it; by the terms of the constitution, and in virtue of the coronation oath, the one cannot exist without the other. And here I will dismiss this part of the subject, and proceed to others that have reference to expediency rather than right. And in the first place it is contended that whether there be an established Church or not; there ought not to be one. I feel how incompetent I am to add any new arguments, to the numerous and powerful opinions that have been advocated by the most enlightened of all countries in opposition to this view; I merely recall to the recollection of hon. members a few of the more obvious reasons which are urged in favor of an established Church. And in the first place I will request hon. members to recollect that the connection of Church and State is to be traced to the earliest periods. The Jewish religion, the foundation of our own, was identified with the state; the sovereign in fact reigned in virtue of its ordinances, and was bound to their observances; and upon the Christian dispensation, the first monarch that embraced its tenets, as was observed by my honorable friend from Lanark, proclaimed it to be the religion of the state. The great Constantine declared himself, by miraculous interposition, a convert to the religion of Christ, and whether sincere in his professions of conversion or not, he marched to battle and to conquest under the sign of the cross; and being established on the throne of the world, he vouched his sincerity in the faith he had avowed, by ~~confirming~~ ^{confirming} that religion; through whose influence he had conquered, for the rest of his life; and from that period to the present throughout the whole Christian world (with one exception) there has existed an established religion in every kingdom: at least I am not aware of any other exception than that I have alluded to. And is it not right that it should be so? if we believe in the supremacy of the Almighty, if we admit that by his permission kings reign and nations exist—if we acknow-

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ledge that from him we derive every blessing—and that by his power we are protected, can any government hope to prosper, that does not shew its reverence and its gratitude, by endeavouring to the utmost to sustain, cherish, and enforce obedience to those divine laws, upon which is based all human institutions—and without which they must perish? It is true that human laws cannot always restrain the licentious practices of the profane, much less can it control the impious mind of man, but it should at least guard against all open avowal of infidelity—and in reverence of the Creator, shew at least a resolution to enforce obedience to his commandments, as far as man can control his fellow. In opposition to this reasoning it is said that the genius of the age is against all restraints upon the conscience whether of religion or otherwise. And as a proof, it is declared that in England the people are anxious for a separation of church and state. Nothing can be more unfounded than this opinion—the people of England on the contrary are enthusiastically attached to the existence of the Established Church, and no one thing, as has been universally admitted, so powerfully conduced to the overthrow of the late Ministry as the notion that prevailed that it was inimical to the Church establishment. It may be recollected that about a year ago His Majesty addressed the Bishops in a speech emphatically declaring that he would sustain in its purity and efficiency the Established Church. I was in England at that time, and it is not easy to describe the enthusiasm with which this address was hailed throughout the kingdom—so much so that a prominent member of the House of Commons, *opposed* to the views of the King, stood up in his place and declared that “the opinion of His Majesty had spread like wild-fire through the kingdom, and that he would be sustained by his subjects to an extent that convinced him, His Majesty’s then ministry could not exist.” And the truth of this prediction has been verified. The truth is, that the only unpopularity under which the Church in England suffers, is from the mode in which its means of support are collected—if it were possible to sustain the Church there, in the same manner that we have it in our power to do here, we should hear of no complaints—happy would the people be if such means existed among them.

There are, it is true, examples of the dissolution of the connection between Church and State—France affords the most conspicuous, and what are the lessons it teaches? For years the disciples and teachers of atheism and infidelity, had taught their pernicious doctrines; contempt and derision of all religious observances were the first fruits—next came clamorous complaint, and open defiance of the laws—revolution and bloodshed followed, and the fair fields of France, and of the most beautiful countries in the world, were laid *desolate*; the religion of Christ was denounced, and the altars, dedicated to the worship of the Most High, were cast down and destroyed, and the ministers of His word were slaughtered, and their blood deluged the places sacred to the ordinances of the Almighty. This course of wickedness and impiety however, had its termination; after a season men began to reflect on the consequences of their unchristian conduct—reason and religion resumed their sway, and the worship of the

Almighty was once more restored, and in the re-establishment of His ordinances the throne sought its only certain protection and security. A neighbouring country has also been referred to as affording an example of a government existing without the support of an established religion. Of the constitution of the United States I would speak with the greatest respect, but if I were to point out one proof, stronger than any other of the disadvantages, temporal as well as spiritual, arising from the want of an established religion among the people, I would point to the example of that country. It is said that the declaration of independence was drawn up by the late Mr Jefferson; if so, the blot which above all others disfigures and disgraces that document, viz. the absence of all acknowledgment of a superintending Providence, and the want of any recognition of the duties of man to his Creator, may be accounted for by its being the work of one who was confessedly deeply imbued with the infidelity of Voltaire, Rousseau, and others of the French school, whose writings, it is universally admitted, led to the Revolution, and horrible crimes that attended it in France. May British subjects keep the dreadful lesson constantly in remembrance, and avoid similar disastrous consequences. Writers of every political creed, are, for the most part agreed that the absence of an established religion in the United States, is a want that tends more than any other defect to render the government insecure; it wants the main pillar and support of all earthly governments, viz. the support derived from a direct acknowledgment of the power of the King of kings, and the recognition on the part of the State, of the duty to yield obedience to his laws, and to punish the transgressors of his commands. The Church of England is abundantly tolerant, and the laws of the empire punish no man for his religious opinions, provided they are not offensively promulgated; but open denunciations of the Christian religion are not only punished because of our duty to shew our reverence to what is sacred, but to protect the community from the scandal of having the minds and feelings of the pious and virtuous outraged by open exhibitions of irreligious profligacy and blasphemy. The maintenance and protection of the Christian religion is a *principle* of our constitution, and must continue so while the monarchy exists. It is otherwise in the United States; infidelity and blasphemy stalk abroad there, and are openly taught and avowed without any notice being taken of these disgusting enormities by the civil magistrates—if there be any truth in the predictions of holy writ, a dreadful punishment must, some day or other, fall upon a nation thus regardless of its highest and most sacred duties. But if these examples of the opinions of men of other countries are adduced to establish one side of the argument, it is proper we should bring under notice the not less valuable opinions of men of our own country, in favor of the opposite. What then is the opinion of the great body of dissenters in England, especially that most respectable, extensive, and influential class, the Methodists? Is it not notorious that recently, at a time when the dissevering of Church and State was apprehended, that they in a body, stood forth in defence of the institutions of their forefathers, and to maintain in unpaired vigor, power and purity that

Church from which they sprung, and in the continuance of which they declared their belief, was involved the security of religion itself. They foresaw that if the Church of England were prostrated, the destruction of the monarchy must follow, and they would themselves be left without protection; and happy am I to think that this feeling is rapidly gaining ground in this Province. The union of the British and Canadian Methodists is an event which every good man, every friend to religion and the peace of the country must and do hail with delight; it disturbs those only who seek discord, and hope to benefit by the disunion of those who alone have the power to frustrate their treasonable designs. This same feeling prevails equally among other classes of dissenters, especially those from the Kirk of Scotland—they may claim a different form of church government for themselves, but they deprecate the attempt to disturb that which binds the State to the protection of religion, by separating it from the established church. And as to the notion that by separating Church and State the ministers of the former will avoid all interference in secular matters, nothing can be more fallacious, and in proof of this, let me ask whether ministers of the different denominations in the United States, struggle on every occasion of a political contest, to gain the ascendancy? It is notorious that such is the case, neither can any one who travels through the country, especially the New England States, fail to be struck with the unhallowed strife that exists between the different sects, especially those who are denominated Orthodox and Unitarian. The existence of an established religion keeps the rivalry under subjection, and tends, above every thing else, to sustain harmony among the great family of conscientious dissenters.

I shall now advert to the opinion entertained by many conscientious men, that ministers of religion should obtain their support from the voluntary contributions of the people, and, therefore, that the Clergy Reserves should be applied to some other purpose: and I shall best answer this position by showing the undeniable advantages that flow from a settled and permanent provision for the Clergy. Public provision being made for the respectable support and maintenance of the ministers of religion ensures a more learned body than if left dependant on voluntary contributions. It is not probable that our universities would be thronged as they are now, with the sons of gentlemen and men of fortune, who are looking to the church as their future profession, if when ordained they would be left to voluntary contributions for their maintenance. It unquestionably is, and always will be found to be a powerful motive with all men who aim at being ministers of religion, to pursue their purpose, to be assured that when ordained they are not left to chance for their support; and if learning be a necessary distinction in a clergyman, (and no one will dispute it) hold out to the youth who are piously disposed, the assurance, that if they devote themselves to study and preparation for their sacred calling, they will not be left destitute or dependant on mere charity for their sustenance. This certain prospect of reward has, no doubt, led many men to seek church preferment, who afterwards adorned and enlightened mankind by their piety—their learning—their virtue—their labours and exam-

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plary duties, which are best calculated to dignify and render happy the whole human race, and who, but for that circumstance, might have turned their attention to pursuits that, comparatively speaking, would have conferred but little benefit on their fellow creatures. When also ministers are raised above dependence on the generosity of their flocks, they feel themselves more at liberty to preach the truth as it is, rather than as their congregation might wish it to be, than they would if their creed, and the support of their families depended on the capricious feelings of an uncertain multitude; and, besides, their having no motive to depart from purity of doctrine, and being fearless in the discharge of their duty, the parson or rector of the English Church, being established in one place, soon acquires a knowledge of each of his parishioners, his wants and his wishes; he identifies himself with the prosperity of each; he secures to himself their affection—they look up to him not only as their spiritual guide, but as their friend and adviser—he becomes the arbiter of all their differences—the reconciler of their disputes, and the preserver of their peace and friendship: in all their difficulties they look up to him for advice, and in their afflictions they appeal to him as to a father. These are a few of the many advantages that result from a settled clergy, raised above the necessity of seeking support from charitable or other kinds of voluntary contributions. It has been by some asserted, that tithes in England are a heavy burthen upon the people. I will not argue this point, but I will venture to say, that the amount levied by various direct and indirect means in the United States for the support of the different ministers of religion, amounts to a far greater amount than is generally levied, probably greater in proportion for the number of inhabitants of the country than are levied on the people of England. In fact, the whole country is spread over with persons asking support to this minister and to that; and the amount thus collected, if report be true, is almost incredibly great; and when we come to enquire as to the manner in which these vast sums are applied, it will be found that in many instances it is given to defray the fixed salaries of the clergy, placing them as much as possible beyond the reach of chance for their support. This system is pursued by the British Methodists—and from the large funds they now possess, they are enabled to give their Missionaries an outfit, defray the expense of their passage to the places of destination, and when there to pay them a sum that maintains them in respectability; so that it will be found, that all denominations feel the importance of having some settled support, and that they consider it no small disadvantage to their usefulness to be without it.

Next, it is asserted that it is inexpedient to continue this appropriation because the people desire to do away with it—others say that all denominations of Christians should participate—and the supporters of this bill contend that the whole reserves should be applied to purposes of education. For my own part, I have no proof that the people desire to do away with the grant set aside, by a gracious Sovereign, for the support of that Church he had sworn to maintain throughout his dominions, Scotland excepted, on the contrary, if we may judge from the rapid encrease of Churches erected by members of the Church of

England, an increase that may be said to be greater than of any other description of Christians within the Province—the constant and pressing demand for additional ministers, and the vast influx of members of the Church from Great Britain and Ireland, I think it may be fairly augured that ere long it will be considered anything but popular to pursue this attack upon the property of the Church. Indeed, I have myself felt satisfied that the members of the Church of England far exceed in number what is generally imagined—in my opinion they rank next to, if not equal with the Methodists, and it would perhaps, be no exaggeration to say that 100,000 souls in this Province may be pronounced as belonging to the Established Church. One fact may be adduced in some degree shewing the truth of this assertion. When I went to England two years ago I was the bearer of petitions from 7,000 inhabitants against any interference with Church property—and these persons signed the petitions without any effort being made to obtain them, beyond fairly and truly explaining the object of these petitions, a course pursued in conformity with distinct instructions to that effect—and well assured am I, that if half the trouble had been taken to procure signatures to these petitions that were used to obtain them to addresses infinitely more exceptionable, that the number might have been doubled.

As to the division of the reserves among all denominations, the thing is utterly impracticable, and the fancied evil of them belonging to our sect would not be remedied; give to all existing sects to-day and those that spring up to-morrow will complain that their pretensions were not anticipated. They might be divided among two or three, and but for the unfortunate course which my hon. friend from Lanark has taken, the Kirk of Scotland might have participated, but he has destroyed the hopes they might have entertained; and finding this to be the case, he has become forgetful of his own safety, and the rights of others—aiming at their destruction, he has brought a falling edifice upon his own head, and buried himself and his friends in the ruins. For my own part I have ever wished to see the Kirk of Scotland maintained and provided for from public resources—and if these have not been granted to a greater extent, the members of the Established Church are not to be blamed.

With respect to the bill under consideration my present impression is that it is without the limits of our constitutional power to pass it; we are authorized to regulate the appropriation of our laws, but not to destroy or alienate the endowment. But apart from this, is it not most unreasonable to ask for the whole of these reserves for purposes of education—can it be imagined that any such claim will be sanctioned? I feel confident that it will not, because it ought not. Lands have to a large amount been already given for the education of the people of the country, and if more be required they must be sought for in some other quarter than the reservation for the Church. I forbear remarking upon the insulting language of the preamble and other parts of the bill—as being not worthy of grave consideration.

And now Mr Speaker, I will ask why is the established Church thus assailed; can it be alleged against her that her Litany is not holy,

that her doctrines are not pure, that her practices or principles are in any respect reprehensible. It is not for human lips to pronounce the eulogy of the Church of England; as well might we attempt to add dignity to the attributes of the Deity by the praises of mortal man. Again I will ask, are the ministers less pious, less learned, or less anxious for the spiritual welfare of their fellow men; are they found to be intolerant, persecuting or bigoted? are there any men more devoted to the sacred duties of their calling? some exceptions may be found among them, as must be the case among all descriptions of persons; but without vain boasting they may challenge comparison with any other class of Christian ministers, and this no persons are more ready to admit than the respectable portion of the community, of whatever sect or denomination.

I am aware that it has been alleged that in this country the Clergy of the Church of England have been found to mix themselves too much with political party; but in this as in every thing else the greatest injustice has been done them by those who seem to have taken delight in misrepresenting them. It has pleased the Sovereign to call to his Councils in this Province (without solicitation) one distinguished clergyman of the Church of England; and because, in the necessary performance of duties thus imposed upon him, he has at times taken a part in the public business of the Province, he has been assailed with a virulence and malignity of enmity that has seldom been surpassed. But, Sir, the force of these assaults have long since been spent, and the justly beloved and honored object of unfounded and ungenerous reproach stands forth at this day with a character as spotless and free from stain as it had ever been. Often within my own knowledge has my respected friend been accused of promoting measures which, by some persons, were considered as injurious to the interests of the country, when in truth he had used every exertion in his power to prevent them. But the enmity of man against his fellow requires no proof of any accusation, assertion true or false, will answer present purposes, and that is all that is cared for. Happily, however, better times and better feelings have arisen; it is beginning to be seen and understood that the Archdeacon of York interferes no further in public matters than such as are strictly required of him, and which relate to those great interests in the preservation of which he is particularly interested. His labors, untiring and unremitting, for the advancement of education since he first placed his foot in this Province—the vast benefits he has in that respect conferred on the country—his devotion to his sacred duties—his active benevolence—his almost unbounded charity—his hospitality—his goodness of heart—his firmness of friendship—and his unflinching integrity, are qualities too conspicuous in his character to be overlooked or denied; and when it shall please Divine Providence to remove Dr Strachan from this world of care and anxiety, he will be followed to the grave by the tears of the widow and the fatherless, and of thousands whose sufferings he had alleviated, and who looked up to him with gratitude as their benefactor and friend,—while his memory will be cherished with reverential respect by the good and the virtuous wherever he was known. I ought per-

haps to apologize for what might seem a digression, but I could not restrain the humble tribute I have offered to the acknowledged merits of a valued friend.

I shall now conclude these remarks by expressing an anxious but confident hope and belief, that the attempts now made to destroy the influence and usefulness of the Established Church in this land will prove abortive—for my own part I rest contented in the conviction that that which was bestowed for the wisest and holiest of purposes will be protected and maintained by the Author of all good, in despite of the bad passions of misguided men who are seeking for its overthrow: and although the bitter waters of strife and envy are for a time let loose and are permitted to surround and rage against this heavenly edifice, it will withstand the assault,—its glory cannot be overshadowed—its light cannot be extinguished, nor its influence destroyed, until religion and morality shall have been overwhelmed and abolished, by the universal corruption of mankind.

No. V. (*See page 50.*)

(From the Kingston Chronicle and Gazette, May 9, 1835.)

CLERGY RESERVES.—REMARKS ON THE DEBATES UPON THAT SUBJECT, BY A MEMBER OF THE SCOTTISH CHURCH, IN LOWER CANADA.

To the Editor of the Kingston Chronicle and Gazette.

SIR.—The debate on the Clergy Reserves Bill, in the House of Assembly of your Province, which took place on the 4th, was inserted in your paper of the 25th and 28th of last month. As the subject is interesting here, as well as with you, I have read it attentively, particularly the speech of the Solicitor General, who enters more fully into the subject than the other speakers and treats it as a legal question. Few, if any of his arguments are new, having appeared before in several anonymous publications; but as they are now advanced and avowed by a gentleman holding a high official situation, whose opinion will no doubt have much weight with those who have not examined the question, I request room in your valuable paper to state opinions widely different from his; and, though I do not feel equal to do justice to the subject, yet what may be advanced on the other side will, I doubt not, convince every unprejudiced and impartial mind, that his opinions are not well founded.

His object is to prove,

First—That the Church of England is the ESTABLISHED CHURCH, in all the British dominions, Scotland only excepted: and;

Second—That the lands directed to be set apart, by our Constitu-

tional Act, (31, Geo. III. ch. 31) for the support of a "Protestant Clergy," are destined by that Act solely for the support of the clergy of the English Church.

I shall endeavour to examine, as briefly as possible, the authorities and arguments advanced by him in support of these doctrines, in the same order nearly as they occur in his speech.

He first refers to, and quotes from, the Acts, 26, Henry VIII. ch. 1, and 1, Eliz. chap. 1. The object of these Acts, particularly the last, as stated even by himself, was to prevent any foreign power from exercising authority of any sort within the realm and the dominions that then did or afterwards might belong to the Queen and her successors. But it does not appear that this enactment bears upon the question of establishing the Church of England more than any other, in the Colonies. The Church of Scotland has never acknowledged nor permitted any foreign power to exercise jurisdiction, either spiritual or temporal, in that kingdom nor in the branches of her national Church established in other parts of the British dominions.—And, though she does not admit or understand the King's supremacy in the same sense as the Church of England does, by allowing him to prescribe to her forms of prayer, &c. yet as she does not recognize any head on earth superior to the King, and he sends a Commissioner every year to sit in the General Assembly of that Church, it must be allowed that she complies with the provisions of the 1st of Elizabeth, since no enactment was made before nor at the time of the Union with England, that ever I heard of, to relax the provisions of that Statute in favor of the Church of Scotland. It may, however, be mentioned as a curious fact, rather than of any importance in the present discussion, that the British Parliament, soon after the Union, passed an Act (10, Anne, ch. 7) by which Ministers of the Church of Scotland, as well as Episcopalian Ministers officiating there, are required to pray, once at least every Sunday, for the Queen, without prescribing the form of prayer, under a penalty of twenty pounds for the first neglect, and for future omissions there are more severe penalties. But it is believed this Act was occasioned by the conduct of the non-juring Episcopalians more than that of ministers of the Scottish Church; for the latter were generally in favor of the Union, and by their moderation and firmness contributed much to bring it about.*

With regard to the new Roman Catholic subjects in Canada: by the fourth article of the Treaty of Peace of 1763—"His Britannic Majesty, on his side, agrees to grant the liberty of the Catholic religion to the inhabitants of Canada, &c. as far as the laws of Great Britain permit." And by the Act of 1774, (14, Geo. III. cap. 83) an oath of allegiance is prescribed, expressly for them and their descendants. So that it appears they comply in part with the Act of Elizabeth and it has been partly relaxed in their favor. Were it not that, by the Act of 1774 and also by our Constitutional Act, the ~~Priest~~ cannot exact tithes from those who do not profess their religion, *Priests* the Church of Rome would in fact be the Established Church in all

* See De Foe's History of the Union, pages 219, 235, 255 and 262.

the country parishes, at least, that were laid out and settled in 1774. Even as the law now stands, she seems to have as good or rather a better claim to that style and title than any other Church in the Canadas.

The argument in favour of the Anglican Church drawn from the Act of Union (5, Anne, ch. 8,) is lame and inconclusive. One great fallacy lies, in Mr Hagerman giving (as others have done before him) to the word *Territories*, at the end of the coronation oath, an extensive signification which does not belong to it, so as to include, like the Act, first of Eliz. *all the dominions or countries that then did or afterwards should* belong to the Crown of Great Britain. But, whatever meaning may be assigned to the word as there used; is it possible to believe that the mere *form* or *words* of the oath can establish the English Church, or any other Church, in *Territories* where it was not previously established by some positive parliamentary enactment for that *express* purpose. After discussing the Articles of Union, the Scottish Parliament, apprehensive that their religious liberties might be in jeopardy when the British Parliament should be formed, where the Representatives of Scotland were to consist of a small minority only, passed an Act for "securing the Protestant religion and Presbyterian Church Government," in that Kingdom. In this act it is enacted,—“And lastly, that after the decease of her present Majesty (whom God long preserve) the Sovereign succeeding to her in the Royal Government of the Kingdom of Great Britain, shall in all time coming at his or her *accession* to the Crown, swear and subscribe, that they shall inviolably maintain and preserve the foresaid settlement of the true Protestant religion, with the government, worship, discipline, rights and privileges of this Church, as above established by the laws of this Kingdom in prosecution of the claim of right.”

In another section of the same act the following words occur,—“declaring nevertheless, that the Parliament of England may provide for the security of the Church of England as they think expedient, *to take place within the bounds of the SAID Kingdom of England,*” &c.*

Afterwards, when the Articles of Union came to be considered in the English Parliament, they also passed an Act, “for securing the Church of England *as by law established.*” This act prescribes the form of the coronation oath, and as it has, in my opinion, been much misinterpreted or misunderstood, I give it at length. “And be it further enacted,” &c. “That after the demise of her Majesty (whom God long preserve) the Sovereign next succeeding to Her Majesty in the Royal Government of the Kingdom of Great Britain, and so for ever hereafter, every King or Queen succeeding and coming to the Royal Government of the Kingdom of Great Britain, at his or her *Coronation*, shall in the presence of all persons who shall be attending, assisting, or otherwise then and there present, take and subscribe an oath to maintain and preserve inviolably the said settlement of the Church of England, and the doctrine, worship, discipline, and govern-

* In this, and some other quotations, I have marked words as emphatical, though not so in the original, wishing them to be particularly noticed.

ment thereof, *as by law established* within the Kingdoms of England and Ireland, the Dominion of Wales, and Town of Berwick-upon-Tweed, and the Territories thereunto belonging."

This act and that passed by the Scottish Parliament were engrossed with, and make part of, the Act of Union between the two Kingdoms.

I must now refer to a very important part of the Act of Union, as applying to the Colonies generally, and which is not even mentioned by the Solicitor General; namely, the fourth article, which is as follows:—

"That all the subjects of the United Kingdom of Great Britain shall, from and after the Union, have full Freedom and Intercourse of Trade and Navigation to and from any Port or Place within the said United Kingdom, and the Dominions and Plantations thereunto belonging: and that there shall be a communication of all other Rights, Privileges, and Advantages, which do or may belong to the subjects of either Kingdom; except where it is otherwise expressly agreed in these Articles."

The most careless reader will notice the difference between *Dominions* and *Plantations* used here, and *Territories* in the coronation oath; and when words so different are used in the same Treaty or Instrument, they must have different significations. In this article the words in question evidently mean Colonies, Provinces or Possessions at a distance beyond the seas, which are synonymous with Dominions and Plantations; but I have not seen *Territories* used in the same comprehensive sense, in any act of Parliament.

I shall now endeavour to shew that *Territories*, in the coronation oath, refers only to the Islands of Jersey, Guernsey, and perhaps other small Islands; the ancient Territories of England, before she had acquired more distant "Dominions and Plantations" beyond the seas. The only act of the English Parliament, before the Union, which can apply to Canada in religious matters, is the first of Elizabeth, on which the Solicitor General relies very much; he also refers with confidence to an act of the British Parliament (14, Geo. III. chap. 83,). But, after what has been said regarding these acts, really I cannot perceive how one or the other, or both together, can be said to establish the Church of England in Canada. Their chief object is to establish the King's supremacy, in his own Dominions, to the exclusion of any foreign jurisdiction or power, and particularly that of the Pope of Rome. In these Acts, supremacy is perhaps not clearly defined or explained, but if His Majesty and the Cabinet Ministers are satisfied that his supremacy is duly maintained, surely none of his subjects have any reason to complain.

The Act of Union merely *secures* the Church of England as then by law established; but does not by any means *extend* it to places where it was not previously established; it has indeed been attempted by some to misconstrue the exception at the end of the fourth Article, so as to signify that the religious establishment of the English Church in all the Colonies equally as in England, was excepted; but the 5th, 6th, 8th, and 11th Articles contain *express* stipulations in favour of

the subjects of one Kingdom, which are withheld from those of the other Kingdom, which sufficiently explains and accounts for that exception. Besides, the words of the coronation oath can never, by implication merely, extend the Church establishment: for, to do so would require an *express* enactment or stipulation, in some of the other articles, for that purpose. It is proper to consider the acts of the English Parliament that are particularly referred to, and confirmed, by the Act of Union in order to see how far they extend or establish the English Church. These are the 13, Eliz. chap. 12, "An Act for the Ministers of the Church to be of sound religion." And 13 and 14, Charles II. chap. 4—"An Act for the uniformity of the Public Prayers," &c. Also, "all and singular other Acts of Parliament *now in force* for the establishment and preservation of the Church of England," &c. On referring to 13, Eliz. it will be found that the preamble indeed, states—"That the Churches of the Queen's Majesty's Dominions may be served with pastors of sound religion, Be it enacted," &c. But the dominions of England were then very small, there being none on this side of the Atlantic,* and no general words are used to extend the provisions of this Act to Dominions or Colonies that were acquired afterwards; such as are inserted in the Act of Supremacy, already referred to. The other Act, 13, Charles II. is expressly limited in its operation to *England, Wales, and the Town of Berwick-upon-Tweed*. Also the Test Act (25, Charles II. chap. 2, now repealed or greatly altered) was confined in its operation to all persons holding any office, civil or military, in *England, Wales, the town of Berwick-upon-Tweed, or in His Majesty's Navy, or in the several islands of Jersey and Guernsey*, Likewise in an Act passed some years after the Union, (1, Geo. I. statute 2, chap. 13) "An Act for the further security of His Majesty's Person and Government," &c. by sections 2 and 3, the oaths and declarations, to be taken and made in England, are not required farther than in *Jersey and Guernsey*, and by Officers of the Army and Navy. From these acts it appears that the Church of England is at least partly, if not fully, established in these two islands, and, as they are not named in the coronation oath, it is evident that the word "Territories" is introduced to include them and any other small islands or places where that Church was considered to be established; for the Union as we have already seen, merely *secured* the Church Establishment, but did not *extend* it to places where it was not previously established.

At the commencement of his speech, Mr Hagerman says he believes the subject has not heretofore undergone much discussion. This is a mistake, for it appears that in New York and New England, when they were British Provinces, at least eighty years ago, the doctrine was stoutly contended for, that the Church of England was the Established Church there and in the Colonies generally. Mr Smith took the other side of the question, and in his *History of New York*

* The first attempt to plant a Colony in America was made in 1583 or 1584: about the 25th or 26th year of this reign. See Ency'a. Brit'a. 4th edition, article—RALEIGH.

(part 6, chap. iv.) published first in 1756, has refuted the chief part of Mr Hagerman's arguments. Indeed much of what I now advance, is only the ideas and arguments of Mr Smith, but not so fully and forcibly expressed as in his work.

After speaking of our Constitutional Act, the speaker adds—"The Church of England was already established, it was a consequence of Canada becoming one of the territories of the British Crown, and the only object of the Statute was to give effect to its usefulness." He then speaks of the Bishop of Nova Scotia having previously exercised spiritual jurisdiction and power in Canada, which was founded on no statute. Soon afterwards he puts these questions—"In the first place, by what authority did His Majesty authorise the installation and appointment of a Bishop to the Diocese of Quebec, if the power did not belong to him as the head of the church which he had sworn to maintain throughout all his dominions; and having exercised this power, under what law does the Bishop act, and from what laws does he derive his ecclesiastical power?" He then gives the following answer to his own questions—"Clearly from the laws and canons of the Church of England, which declare the Church of England to be the established Church throughout the British dominions."

From the interpretation given by the Solicitor General to the coronation oath, I cannot help having doubts of his accuracy in what he says of the "laws and canons of the Church of England;"—more especially as he neither quotes them nor informs us where they are to be found. But, in whatever terms they may be couched, they can be of no force or validity in Canada, except it be in a spiritual sense, unless confirmed and extended to this country by some Act of Parliament; as will hereafter be shewn. In the above quotation, a doctrine, assertion, or principle is advanced, supposed to be derived from the common law of England. Though it is not new, yet the best authority for it, that has come to my knowledge, is a pamphlet published in London, about twelve or thirteen years ago, and signed a member of Parliament. It is there more neatly expressed, "The conquest of the country carried the King's religion with it." This doctrine was advanced in New York, about 1753, and was denied and refuted by Mr Smith, in his History of that Province, already referred to. What he says on the subject is too long to find a place here; suffice it to mention, that, among other reasons to shew its absurdity, he points out as a consequence of its adoption, that if colonies were planted or acquired when the English nation and their King were pagans or papists, the religion established in such colonies must be paganism or popery!*

It is proper and requisite to refer also to Blackstone's Commentaries (vol. i. page 106, 107,). In speaking of "Jersey, Guernsey, Sark,

* The Honorable William Smith is good authority on questions of law. He died at Quebec, in 1793, after being Chief Justice of the Province for eight or nine years. A short biographical account of him was published in the Quebec Magazine, in which he was stated to be the *greatest law character America ever produced.*

Alderney, and their appendages;" among other particulars he states, "They are not bound by common acts of our parliament, unless particularly named." Now as these Islands and their appendages are not named in the coronation oath, is it not plain that the word *territories* is added so as to include them? He then goes on to treat of "our more distant plantations in America and elsewhere;" and classes them into two sorts;—those that are claimed by right of occupancy and peopled from the mother country; and those that have been either gained by conquest or ceded to us by treaties; in this class Canada is included. Having laid down the law regarding the first class, he proceeds to the second class of colonies, as follows: "But in conquered or ceded countries, that have already laws of their own, the king may indeed alter and change those laws; but, till he does actually change them, the ancient laws of the country remain, unless such as are against the law of God, as in the case of an infidel country. Our American plantations are principally of this latter sort, being obtained in the last century either by right of conquest and driving out the natives (with what natural justice I shall not at present enquire) or by treaties. And therefore *the common law of England, as such, has no allowance or authority there*; they being no part of the mother country, but distinct (though dependent) dominions. They are subject however to the control of the Parliament; though (like Ireland, Man, and the rest) *not bound by any Acts of Parliament, unless particularly named.*"

In regard to the power formerly exercised in Canada by the Bishop of Nova Scotia, I am not aware whether it was or was not conferred by statute; but, being a *spiritual* power, as admitted in the speech (and from the account of his visit to this Province in 1789, it seems to have been nothing more*) he might perhaps hold it from the Royal authority only. However, it must be borne in mind that the Ministers of his Church in Canada received their chief support then, as I believe they do still, from the Society for propagating the Gospel in foreign parts; and, had any of them hesitated to submit to his authority his representations to that Society would, doubtless, have brought them to submission, by curtailing or withholding altogether their salaries. Ecclesiastical or spiritual courts and jurisdictions, unless aided by the civil power, are very feeble; and in many cases require such assistance, "in repressing the insolence of contumacious delinquents, and rescuing their jurisdiction from that contempt, which for want of sufficient compulsive powers would otherwise be sure to attend it."

Possibly the Bishop of Nova Scotia may possess all requisite powers in his own diocese, by the same means as he could heretofore exercise them in Canada; but I am confident he has more power there than ever he had here; if not by British Statutes, at least by provincial acts. For a law passed in that Province, so long ago as 1758, enacts, "That the sacred rites and ceremonies of Divine worship, according to the Liturgy of the Church established by the laws of Eng-

* See the Canadian Magazine for 1825, article, *Christ's Church, Montreal.*

land, shall be deemed the fixed form of worship, and the place wherein such liturgy shall be used, shall be respected and known by the name of the Church of England, as by law established." Provision is made at the same time for the liberty of conscience of those who do not belong to that communion. The clergy of that Church, however, claimed, and it seems still enjoy, the exclusive privilege of marrying by licence; an attempt, in 1818, to extend it to other clergymen having proved abortive.*

Mr Hagerman answers his query, respecting the appointment, &c. of the Bishop of Quebec, in his own way; but I am not of his opinion. I have not seen nor can readily have access to the Royal Letters Patent, appointing him: on looking, however, at our constitutional act, section 40, the construction I put on it is,—that it gives the King the same power in Canada which he possesses in England, of appointing the Bishop of Nova Scotia, or any other person, to "Spiritual and Ecclesiastical Jurisdiction and Authority," &c. "according to the Laws and Canons of the Church of England, which are lawfully made and received in England." Were the Church of England established here, in the sense contended for by the speaker, would not this clause be superfluous? But farther, Letters Patent were issued, dated at Quebec the 12th August, 1818, a copy of which is now before me; "erecting the Protestant Episcopal Church of Montreal in Notre Dame Street, into a Parish or Rectory, and appointing a Rector to the same," &c. &c. In these Letters Patent the 38th Section of our Constitutional Act is recited as the authority on which they are granted. Now it is not credible, nor can I bring myself to believe that the King could erect an extensive Diocese and appoint the Bishop, merely on his own authority as head of the English Church; yet that he required an act of Parliament to enable him to erect a rectory and appoint a rector to the same!

It is proper to notice, that, in the "Act for securing the Church of England as by law established," at the Union; previous *Acts of Parliament* only, are referred to and confirmed, but not a word is said of the *common law*. The reason is obvious; because the common law had established the Church of Rome; for though Christianity be part of the *common law*,† yet the establishment of the present Church of England rests altogether on the *statute law*. The opinions of the Solicitor General cannot, therefore, derive any strength or support from maxims supposed to be drawn from the common law.—One of his arguments I do not remember to have met with before, namely, "that to libel or attempt to bring into disrepute the Liturgy of the Church of England is an indictable offence,"—that it is so in England, by Statutes 1, Ed. VI. and 1, Eliz. is beyond a doubt; but these statutes do not extend to the colonies, and if such be at present the law in Canada, of which doubts may be entertained, as the question has never been tried, it can be only in virtue of the Act (14, Geo. III.

* Halliburton's Nova Scotia, published in 1829: vol. ii. page 298 to 302.

† Blackstone Com. vol. iv. page 59.

ch. 83, sec. 11) which confirms the use of the criminal law of England, in this country, where it had been administered for more than nine years, and enacts that it "shall be observed as law in the Province of Quebec," &c.

In confirmation of this and other points already advanced, I refer to the Book of Common Prayer itself, where it will be found, that the Forms of Prayer and service, made for the 5th November, 30th January, 29th May and 25th October were, at the accession of George III. ordered to be used yearly, in all Churches, &c. &c. "within that part of our Kingdom of Great Britain called England, the Dominion of Wales, and town of Berwick-upon-Tweed." Likewise at the accession of George IV. and his present Majesty, a similar order was issued for Prayers and service in all churches, &c. "within those parts of our United Kingdom called England and Ireland." These orders follow the forms of prayer and service; the two last include Ireland, being then united to Great Britain: they are signed by the Secretaries of State for the Home Department; but none of them extend even to the ancient "Territories" of Jersey and Guernsey, much less to "Dominions and Plantations" beyond the seas. The 5th November and 29th May are fixed as Holidays by Acts of the English Parliament, for the security of their Church, before the Union; but if they had been extended by the Union according to the Solicitor General's opinion, as I understand him, they would be in force here and in the other colonies.

For the sake of further illustration and confirmation of what has been stated relative to ecclesiastical affairs, I refer to two Acts of the British Parliament during the reign of George III.; the *titles* of which are sufficient for my purpose. The first is of the 26th year, chap. 84, "An Act to impower the Archbishop of *Canterbury* or the Archbishop of *York*, for the time being, to consecrate to the office of a Bishop, persons being subjects or citizens of Countries out of His Majesty's Dominions." The second is of the 59th year, chap. 6; in which the Bishop of Quebec is also mentioned; it is entitled, "An Act to permit the Archbishops of *Canterbury* and *York*, and the Bishop of *London*, for the time being, to admit persons into Holy orders specially for the Colonies." Thus it is evident that, though the King be head of the English Church, yet he cannot authorise even its Dignitaries to enlarge or extend the exercise of their spiritual or ecclesiastical functions, without an act of Parliament to *impower* and *permit* them to do so!

The speaker refers to the Debates in the House of Commons, when our constitutional act was under consideration; but does not attach much importance to this argument. Neither do I, for the speakers appear to have been of different opinions as to the meaning and intention of some parts of the Bill; besides we are not certain that their speeches are correctly reported. It was during this debate that the difference arose between Mr Burke and Mr Fox, which was never made up; and the reporters appear to have been more solicitous to give the particulars of that difference than what related to the Quebec Bill, which was not so interesting to the public. We have now the

Bill as it passed into a law, and must be governed thereby, unless it shall be repealed or amended.

Your Solicitor General, like others who have gone before him, contends that, by that act, the Clergy Reserves are set apart for the Church of England only; but this is a forced and unfair construction, which the words will not bear. From the tenor of the clauses regarding that matter, and what we may gather from the Debates, it appears the framers of the law expected that one seventh part of the lands in each Township would be an ample provision for all the clergymen that might be required in that Township, which, unfortunately, has not yet been realized, and perhaps never will. The meaning of that part of the act may be collected from the Report of a Committee of the House of Commons on the affairs of Canada in July, 1828, and from the opinion of the law officers of the Crown in November, 1819, inserted in the appendix to the report, No. 14.— That opinion is to the effect, that, though the provision of these lands is not confined solely to the clergy of the English Church, but may be extended also to clergymen of the Scottish Church, (if any are settled in Canada,) yet the terms "Protestant Clergy, can apply only to Protestant clergy recognized and established by law." Under the 37th section, they think the Governor will be justified in applying the rents of these reserves to the support of clergy of the Church of Scotland, as well as to those of the Church of England, but not "to ministers of Dissenting Protestant congregations." Under the 38th clause, when a parsonage or rectory is constituted or erected in any township or parish, such "parsonage or rectory may be endowed with the whole lands allotted and appropriated in that township or parish." This being a discretionary power, they think that it is not incumbent on his Majesty to retain, for any other clergy than those mentioned in that clause, any proportion of such lands. The opinion of the Committee, though not professing to be a legal opinion, is also in favor of the endowment of the clergy of the English Church: but with respect to the proceeds or revenue of the reserved lands generally, they are of opinion that the Government has the right to apply the money, if they think fit, to any Protestant Clergy. I must again refer to the Act of Union, where you will see that in the act of the Scottish Parliament for securing their Church Establishment, (which is incorporated into the Act of Union,) that Establishment is termed "the True Protestant Religion," and these words are repeated four or five times in the act. In the act for securing the Church of England, her establishment is also termed "the True Protestant Religion," though not so often repeated; but no other church establishments nor denominations of Christians are mentioned in the Act of Union. Yet some have stoutly maintained, that, in our constitutional act, the words "a Protestant Clergy," mean Clergy of the English Church only. In some parts of Ireland, as I have been informed, when the word *Protestants* is used it always means members of the English Church; but that is no rule for the right understanding of Acts of Parliament. Our constitutional act, from section 35 to 42, relates only to religious matters: section 35 recites part of the Act of 1774, which speaks of the encouragement

of the "Protestant Religion," and "support of a Protestant Clergy within the said Province." The words "a Protestant Clergy," occur frequently in these clauses, as a general term to include other clergy besides those of the English Church; for when the latter are meant it is expressed so clearly as not to be mistaken; they are called Ministers of the Church of England, sometimes Incumbents or Ministers. It is necessary to be thus minute and particular, to show that the English Church can have no legal claim to the whole of the lands reserved for the support of "a Protestant Clergy." The encouragement of the "Protestant Religion," is the object of these enactments, as just pointed out; and we have also seen that, by the Act of Union, both the Churches of England and Scotland are established in Great Britain as the *true protestant religion*. Protestant was also used previously, as a general term in Acts of the English Parliament: for, in the oaths prescribed by 1st Will. and Mary, the Sovereign promises to maintain the "Protestant Reformed Religion," and the succession was then considered as limited to the *Protestant* line; another act was afterwards passed, (12 and 13, Will. III. c. 2,) "for the further limitation of the Crown," &c. In this act it is explicitly declared that the succession shall be in the *Protestant* line; but that term being, apparently, too general to designate the religion of the Sovereign, it is enacted in a subsequent clause, "That whosoever shall hereafter come to the possession of this Crown, shall join in communion with the Church of *England*, as by law established."

Another argument has sometimes been brought forward in favor of the exclusive claim of the English Church, but it does not appear in Mr Hagerman's Speech; perhaps because it is very lame: however it may be as well to notice it—namely: that men in Holy Orders in the Scottish Church are not called *clergy* or *clergymen*, but *preachers* or *ministers*. The clergymen of both churches are often called ministers, in conversation and also in Acts of Parliament: those of Scotland are styled "*Clergy* of Scotland," in the title of an Act regarding them, (48, Geo. III. ch. 138,) and in another Act, (50, Geo. III. chap. 84,) in sections 15 and 16, the words "*Clergy* of Scotland," occur three several times.

I consider it proper to advert also to another argument which has been lately adduced, (by whom I have forgotten,) though not in the speech under consideration. It is to this effect, that the claim of the English Church has not, until very lately, been called in question, and therefore a sort of prescriptive right or title is supposed to be thereby acquired. On this it may be observed, that these reserved lands produced no revenue for many years and were scarcely thought of by the public or by any person. Until in June, 1820, when it was announced in the official Gazette at Quebec, that a corporation had been erected for managing these reserves, composed of the *Bishop* and *Clergy* of the Church of England in the Province. This opened the eyes of the public, and ever since, on all proper occasions, the Members of the Scottish Church in Canada have not ceased, by petitions and other means, to raise their voice against the injustice of this exclusive claim set up by the Church of England. This corporation was created by a Commis-

sion under the public seal of this Province; and as stated by Mr Stephen, Counsel to the Colonial Department, "it has always been doubted whether the Governor had any strict legal right to issue such a commission."* This gentleman gives an interpretation to the above clauses more favorable to the claim of the Scottish Church, than some other lawyers who have been consulted; but still it is more in favor of the English Church than any other: and our Provincial Legislatures and Governors have, at different times, carried their partiality to that Church still farther than the Act will warrant, which Mr Hagerman considers as an argument that it is the Established Church of Canada. This partiality may be accounted for from the opinions formerly held by some persons in the British Colonies, (now the United States,) though refuted by Mr Smith, as above stated. These opinions were entertained, as was said, by the first Governor of your Province, and it is believed also by subsequent Governors and by some of the Civil Officers of Government, just as they are now maintained by your Solicitor General; and, in the infancy of the Colony, the influence of the Governor and his legal advisers must have had great, and no doubt have still very considerable, weight in the Legislature. But the Provincial Legislature is not to be considered good authority on this point, for it appears they have, in several instances, overstept the limitations and restrictions imposed upon them in matters regarding religion by the 42d clause of the Act; of which there is only a very short and partial quotation given in the Solicitor General's Speech.—For, besides what he quotes, they are also restrained from legislating definitely on "any provisions which shall in any manner relate to or affect the enjoyment or exercise of any religious Form or Mode of Worship, or shall impose or create any Penalties, Burthens, Disabilities, or Disqualifications in respect of the same." Yet, in the face of this explicit and positive restriction, your Legislature passed an Act in 1828, (9, Geo. IV. chap. 2,) *Disabling* and *Disqualifying* certain "Religious Societies" from holding more than five acres of land for any one congregation. Among these Societies, under the name of *Presbyterians*, is of course included congregations of the Scottish Church, one of the Churches established by law in Great Britain.—Now, Mr Stephen, in his examination above referred to, says—"I apprehend that the King might, if it should so please him, appropriate in perpetuity a certain portion of land for the sustentation of one or more English clergymen, or of one or more Presbyterian clergymen of the Church of Scotland," And, in answer to the next question, he adds—"Out of the one-seventh." Were the King of his bounty to do so, would not this Act have the effect of *disabling* the latter clergymen from holding or enjoying more than five acres each? On a careful examination of the other Provincial Acts, they will, I believe, be found much of the same nature. Your Solicitor General draws conclusions from the short Act of 1823, regarding tithes, which I consider the words will not bear: for, in the preamble "a Protestant

* See his evidence before the Committee of the Commons, on the Civil Government of Canada, the 21st June, 1828.

Clergy" is mentioned, and in the enacting part, "the Protestant Church," both of which he restricts to the English Church; but I have shown, from the best authority, namely, Acts of Parliament, that the Scottish Church is also *Protestant* and her ministers a *Protestant Clergy*. In fact, these Acts, instead of proving what Mr Hagerman wishes to infer from them, only prove, in my opinion, that the Provincial Parliament, at different periods, evinced a strong desire, beyond its legitimate authority, to make the English Church in reality, THE ESTABLISHED CHURCH OF CANADA, a title or name which she first assumed publicly in this country, I think a little more than thirty years ago.

On reading the Constitutional Act, and the opinion of Lawyers upon it, I must admit that, though it does not fix the English Church as THE ESTABLISHED CHURCH of Canada, yet it is much more favorable to the establishment of that Church than to the Church of Scotland. This I consider as an infringement of the fourth article of Union between the two Kingdoms; by a fair interpretation of which, the latter Church is entitled to all "Rights, Privileges, and Advantages," which are enjoyed by the former in the colonies; and more especially in Canada, which never was an *English* colony, but was acquired long after the Union, by the blood and treasure of Great Britain and Ireland.* This view of the matter probably did not occur to the British Parliament, and their attention was not directed to it by the debates; otherwise we may suppose, some provisions of the Act would have been different; the present Parliament, however, can at any time repeal or amend the acts of former Parliaments. Its strict legal right to repeal or amend any part of the Act of Union cannot, therefore, be called in question: but, I have so much confidence in the good faith, equity and justice of the British or Imperial Parliament, that I am convinced it has not done so intentionally, nor ever will; unless upon some urgent necessity, or for the benefit rather than injury of the weaker party; and then it will not be done by implication or what may be called a side wind, but in clear explicit words, not to be mistaken; such as have been used already, when amendments were made to the Act of Union.

Having now considered the chief points on which I differ from your Solicitor General, I must in justice own that I agree entirely with him in the advantages to be derived from "a settled and permanent provision for the Clergy," in opposition to some of the other speakers who refer to the days of our Saviour and the Apostles, and talk of Ministers "who were called by the Holy Ghost to the Ministry," as if we were to expect to see miracles in these our days, the same as in the first dawn of Christianity. Considerable assistance may no doubt be expected and relied on from voluntary contributions or pew rents, but some other and certain support should also be provided by law.—

* The following is the substance or meaning of the 4th article, as given in Judge Blackstone's Com. vol. i. page 96—"There shall be a communication of all rights and privileges between the subjects of both kingdoms, except where it is otherwise agreed."

I agree with him also that, in this Christian country, the Government cannot be sure and stable, unless it be founded on Christianity; but I do not run into the extreme of believing, as he appears to do, that there cannot be more than one Church established under the same Government. Certain great essential truths of Christianity are acknowledged and believed by all Christians: the Apostles' creed is taught in the same or synonymous words, in the catechisms of the Churches of Rome, England and Scotland. Many persons appear to be of opinion that there must necessarily be some one Church established in the Colonies, to overshadow every other, as is the case in England. This has always appeared to me an erroneous opinion: there are two churches equally well established in different parts of Great Britain, and there seems nothing to prevent two or more from being established here, even in the same County or Township, so far as any Church requires to be established in the Colonies—nevertheless, the stability of the Colonial, as well as the Imperial Government, must still depend on the great truths of Christianity in which all Christians agree. This is so forcibly expressed by a well known author, that no apology is required for quoting his words. “Doubtless the preservation of Christianity, as a national religion, is, abstracted from its own intrinsic truth, of the utmost consequence to the civil state: which a single instance will sufficiently demonstrate. The belief of a future state of rewards and punishments, the entertaining just ideas of the moral attributes of the Supreme Being, and a firm persuasion that he superintends and will finally compensate every action in human life (all which are clearly revealed in the doctrines, and forcibly inculcated by the precepts, of our Saviour Christ) these are the grand foundation of all judicial oaths; which call God to witness the truth of those facts, which perhaps may be only known to Him and the party attesting: all moral evidence therefore, all confidence in human veracity, must be weakened by irreligion, and overthrown by infidelity.”

In the Canadas we see that persons who are members of all the three Churches above mentioned, fill the places of Legislators, Judges and other civil Offices; and, if my information be correct, the person who was Speaker of your House of Assembly a few years ago, does not belong to either of these Churches: whereas in England, until a very few years ago, these offices were required by law to be filled by members of the English Church. Is it not then something like using words without meaning, to say that the English Church is *the Established Church* in the Canadas? I beg leave here to remark, that, in my opinion, the Ministry allowed the Royal prerogative to be too much restricted and restrained by the Constitutional Act; for, if I understand it rightly, the King cannot endow or set apart any land for a Roman Catholic Clergyman or congregation. This appears more strange and incongruous since the Catholic emancipation bill passed into a law, by which the King's prerogative is now so far unshackled, that, as I have been informed, he may if he see fit, appoint Roman Catholic Governors in these Provinces; but I have not the Act at present by me.

Though I have, to the best of my ability, treated the claims of the Church of Scotland as a legal question only, yet much may also be said in their favor on the score of equity and sound policy; but this part of the subject I must leave to others better qualified for the task; besides you will perhaps find this communication already too long.— Throughout I have avoided touching on the claims made to a share of the Clergy Reserves by dissenters from the English and Scottish Churches: it is not my business to plead their cause, neither have I said aught against them.

The Solicitor General's eulogy on the Church of England requires no comment; neither is it necessary to make remarks on his panegyric upon the Archdeacon of York, who has been called to the Councils of his Sovereign in your Province. This circumstance, however, gives me an opportunity of noticing the injudicious exercise of the Royal prerogative in calling clergymen to the Councils. The present Bishop, like his predecessor, is a member of the Legislative and Executive Councils in both Canadas, and of course also a Judge in the Court of Appeals, besides holding some other offices: and the Archdeacon of York holds the same high offices in your Province.— These appointments have, in my opinion been productive of much jealousy and distrust, and have been followed by consequences injurious to the peace and quiet of both Provinces. One would imagine that these Dignitaries of the English Church would find full employment in a Diocese of such wide extent, by attending to their clerical duties alone, without being occupied with matters so foreign to their vocation as clergymen. The truth seems to be, that these appointments have been made from a desire in the Executive Government to copy too closely after the practice in England (not in Scotland) without considering that our Constitution of Government is merely analogous or similar to, not the same as, that of England. The Legislatures of the Canadas have probably also fallen sometimes into error from the same cause. "An abundant source of error as to all Colonial affairs, is too servile a reference to the proceedings of the Government in England, as a model, without bearing in mind the marked difference which exists between the society there and here," &c.

It is a remarkable and very interesting fact, that the inconvenience and bad policy of investing clergymen with temporal power in the Colonies, particularly Colonies circumstanced as the Canadas are, was foreseen and pointed out, more than eighty years ago, by Archbishop Secker. The scheme proposed by him was, that two Bishops should be sent to reside in the British North American Colonies (now the United States) in some of the Provinces where the Church of England was established or was the prevailing Church: that they should occasionally visit other parts, but "have no concern in the least with any persons who do not profess themselves to be of the Church of England;" that they should confirm members of that Church, ordain Ministers, "and take such oversight of the Episcopal Clergy" as had been previously done by the Bishop of London's Commissaries in those parts. These were the only powers he proposed to be exercised by

the Bishops in America.* In the "Review of his Grace's life and character," prefixed to his works which were published by his Chaplains, Dr Porteous and Dr Stinton, it is stated that this intended mode of establishing Bishops in America, was no new scheme "to serve a present turn, *being precisely the same with that proposed by Bishop Butler twenty years ago.*" Had Mr Pitt, and others of the King's Ministers, been aware of the opinion entertained by these eminently distinguished men, they surely would have paid some attention to it in placing a Protestant Bishop in Canada; particularly as it is a subject with which those Prelates must have been more conversant than Mr Pitt or any other Minister can be, and more competent to form a correct judgment of the powers necessary to be exercised by Bishops in the Colonies.

In conformity with Mr Hagerman's recommendation at the beginning of his speech, I have endeavoured to consider and examine his opinions calmly and dispassionately; and now conclude, with a firm reliance on the sentiment expressed by him, that it must depend on the force of truth and argument to decide which of us is right in our opinions and which is wrong.

Lower Canada, April, 1835.

No. VI. (*See page 51.*)

SPEECH OF MR HAGERMAN, SOLICITOR GENERAL; ON THE
RECTORIES.

House of Assembly of Upper Canada, in Committee, Feb. 9, 1837.

(From the Brockville Statesman, of 4th March.)

MR SOLICITOR GENERAL said he should not have risen thus early in the debate, had it not been for the observation which fell from the hon. gentleman from Russell, and to which he would enter his decided protest; namely, that the resolution will in no respect affect the settlement of the question of the Clergy Reserves, he (Sol.) considered that it strikes at the very root of the matter. He held, that moment these Resolutions should be adopted, the arrangement contemplated would be at an end. (No.) In the first place, he would be glad if those hon. gentlemen who are acquainted with the nature of the controversy, would look back and see by whom this question was originally brought up. They would find that it was by the members of the Presbyterian Church who happened to be resident in this country.

* See Dr Secker's answer to Dr Mayhew's observations; also his letter to the Rt. Hon. Horatio Walpole, dated in 1751, while he was Bishop of Oxford; and published, at his own desire, left in writing, by his executors after his death.

And for what purpose? Was it for the purpose of putting down an Established Church, and placing all persuasions upon the same footing? No such thing. (Hear, hear.) It was for the purpose of gaining for the Church of Scotland one half the Reserves in question, and withholding all participation from every other denomination. (Hear, hear.) That was the object. Now, it would be found that the same principle was attempted to be palmed upon the House of Assembly and the people of Upper Canada, under the false cloak of impartiality, and under the pretence that they are asking equal rights for all denominations. Sir, if the original proposition had been carried, you would have had three Established Churches instead of one, and then you would have had the hon. gentleman from Russell standing up and resisting any interference with the rights of the Church of Scotland, as stoutly as he now denies the rights of the Church of England. This was the origin of the discussion, and it is the principle which still promotes it. Does not the Church of Scotland claim to be an Established Church co-ordinate with the Church of England. The hon. gentleman has too much candour to deny it. Again, with respect to the hon. gentleman from Glengarry. Suppose the Pope had heard him arguing against Church Establishments: why, he would have been excommunicated. (Hear, hear.) [Mr McDonell said he did not wish to be misunderstood—it was the undue exercise of a spiritual jurisdiction by one Church over another, which he complained of.] The hon. gentleman's impetuosity overcomes his reason, I tell him that the Roman Catholic Church is an Established Church in some parts of this Province, because they are authorised by law to levy tithes. The hon. gentleman also said, he looks upon it as odious that clergymen of those Churches which are not recognized by law, should be allowed to solemnize marriage. I will not go out of my way to enquire whether a marriage by a Roman Catholic clergyman of two Protestants, would be a good and lawful marriage.

[Mr McDonell would like to hear the hon. and learned Solicitor, before he goes any further, say whether, in his opinion, such a marriage would be legal.] I am not to be thus interrupted, I am defending him and his Church, therefore, I am a better Catholic than he is. (Hear, hear.) We cannot make a Church less an Established Church by declaring that it is not one. But I tell you, the Church of England will be the Established Church in this Province, in spite of the efforts of her enemies. As for the Church of Scotland, she has no more right than the Methodists; what is more, they will find it to be so, and will be at last obliged to content themselves and submit. They have to go to the Quarter Sessions to obtain permission to solemnize marriage, and if they were to omit doing so, and I were Attorney General, I would indict them. (Hear, hear.) By the Act of Union the Church of Scotland was confined to the Kingdom of Scotland. When George the third came to the throne, what was the oath he took? It was, that he would defend and preserve the Church of Scotland, within Scotland, and the Church of England (Where?) Why, in England, Ireland, Wales, Berwick-upon-Tweed, and in all the Dependencies of Great Britain; Canada was a Dependency of

Great Britain, therefore, in Canada was the Church of England alone to be the Established Church. When George the fourth ascended the throne his oath comprised the same thing, and also that of William the fourth. Does the Act of Union alter this? quite the reverse: it re-enacts the provisions of the statute of Elizabeth regarding this matter. Now, the absurdity of any member of the Church of Scotland, standing up and pretending to advocate the claim of that Church to be an Established Church in this Province, must be evident to any disinterested, ingenious and candid mind. Now, is there any Presbytery which has the power of ordination? (Yes.) No there is not; and I am glad the hon. and learned Speaker says yes, because I shall be happy to hear him undertake to make good the assertion. I am perfectly persuaded that the majority of the House are not assembled here for the purpose of advocating the claims of the Church of Scotland. If they pass these resolutions they will declare their willingness to place that Church over all others except the Church of England. This is the end and aim of the members of that Church. [Here the Sol. General read a petition of the Rev. Mr Rintoul; upon which Mr Thomson rose and said, that whoever placed a copy of that petition in the hands of the hon. and learned Sol. General, it did not redound much to his credit. The Solicitor said he protested against the right of any hon. member to withhold from that House any information which he might possess on a subject of this nature. Mr Thompson denied that he had been guilty of any dereliction of duty in withholding the petition from the House, because it had not received the sanction of the General Synod.]

MR SOL. GENERAL replied that he had no doubt he withheld it from conscientious motives, and because he disapproved of it, but would he be told that when a document was put into his hands, a document which has for its object the destruction of the Church of which he was a member, would it be said that he was not at liberty to expose it? He affirmed that the Church of Scotland was endeavouring to interrupt the course of proceeding which the House had already decided upon for the purpose of resisting the progress of a measure which was intended to place the matter upon such a footing as would satisfy all classes of the community. When he saw such discords attempted to be introduced, it could not but make his blood boil with indignation. (Hear, hear.) You may give up your Rectories, and you may give up your Clergy Reserves, but the Church of England must be the Established Church. (Hear, hear.) It is not in the power of the Legislature to say that, that which has been made universal by act of the Imperial Parliament, can be put down in any Colony belonging to the Crown of Great Britain. Do hon. gentlemen suppose that the Governor has the power of giving a single acre of the Clergy Land to the Church of Scotland?—he cannot do it. What do the petitions assert? that by creating these Rectories, you give the Clergy of the Church of England a spiritual jurisdiction over other denominations, those who make this assertion have never looked into the law. How is it in England? Where is the rector who can exercise any jurisdiction of that kind? And he would appeal to that

hon. Committee, whether the Ministers of any Christian denomination have discharged their duties more inoffensively than those of the Church of England. The Rectories take in only the small spot of ground on which the Church stands, and which the burial-ground comprehends. And what lands are they which have been appropriated to those Rectories? Perhaps it was not generally known that few, if any of the Reserves, had been given to them; I am not aware of a single instance in which there has been any of the Reserves given. (Hear, hear.) But wherever glebe lots were found they were appropriated. (Hear, hear.) But hon. gentlemen say, you should not give them any land at all, but on the contrary, annihilate those trifling endowments already made. They tell you distinctly and plainly, that they wish all those endowments to be rescinded—they seek to do that which was never attempted in any other country. To rob a Sister Church of that which a beneficent monarch has given her for her support. Look at the United States, where they do not even acknowledge the existence of an Established Church. Do they ever interfere with their endowments? No, it is left for Upper Canada to show that spirit of hostility towards the Church, and attempt to take away those pittances which interfere with no right which existed, or can exist, yet, we find the Church is to be assailed and despoiled, and by whom? By a sister establishment, as the Church of Scotland claims to be. Sir, I cannot give up the question without adverting to some other petitions, emanating, not from uninformed individuals, but from the ministers of the Presbyterian Church, complaining of the infringement upon the rights of that Church. (Hear.) Let the country understand it; let it be fairly put: what single right of theirs has been infringed upon? is there a single item of authority which can be exercised by the Church of England now, which could not before. I am sure hon. members will not affirm it, because it is not true; nothing could justify the assertion. The thing I chiefly complain of (and in this respect, the hon. gentleman who introduced these resolutions, has much to answer for,) is, that at the time when this House is endeavouring to set at rest this long agitated question, it should be again disturbed by the interference of the Church of Scotland—the same party who interfered in the first instance. The contest is now just where it began, in consequence of the Church of Scotland again obtruding her claim, evidently showing that they have never been sincere in anything but in attempting to despoil the Church of England. And I would ask whether it is thought that these resolutions are such as are calculated to allay the ferment which it is said is excited in the country. For what purpose then are they brought forward? I call upon this Committee, therefore, as men of honor to reject them.

Some other members delivered their sentiments, among whom was the Speaker, Mr M'Lean: then

The Solicitor General remarked, that his hon. and learned friend, the Speaker, had endeavoured to convince the Committee that the petitions contained nothing to give offence to the Church of England.

If they did not, what could give offence? Did they not complain of the establishment and endowment of Rectories, which was provided for in the Constitution? Those endowments were worth very little; not near so much as the salaries which the ministers of the Church of Scotland received from Government. Then, they represented that the ministers of the Church of England wished to lord it over their consciences. Did any person believe it? No, the ministers of the Church of England never thought of such a thing. The hon. and learned Speaker said, there was a spirit in the country that would not submit to domination. He (the Solicitor General) believed it, he would allow no minister to lord it over him; but there was also a spirit in the friends of the Church of England that would not suffer her to be rode over rough-shod by any body. (Hear, hear.)

It is fair to give the following explanation of part of the foregoing speech; which must, at the same time, be taken as a tacit admission that the other parts are correctly reported.

(From the Kingston Chronicle and Gazette of 29th March, 1837.)

To the Editor of the Chronicle.

SIR.—I have been much surprised to find that such credence has been given to the report of the debate on the Rectory question, as published in the Constitution, when in fact it is misrepresented.

I was present during the whole of the debate, and although there was a good deal of warmth expressed on both sides of the question, I venture to say that it was not caused by Mr Hagerman. In fact, I cannot fancy how any member of the Church of England could calmly discuss a report which, to say the least of it, recommended a direct violation of the 38th clause of the Constitutional Act, 31st, Geo. III. as well as an act of injustice to their Church.

I feel called upon in vindication of Mr Hagerman, to refer particularly to that part of the debate in which he is made to say, that the Quarter Sessions was a contemptible Court. The words were not gratuitous on his part, but had reference to language applied by others. The report of the Committee stated that the Church of Scotland had equal rights and privileges with the Church of England in this country by the Act of Union; and Mr Hagerman in his remarks went to prove that it was never so considered in this Province, and instanced as a proof that the clergymen of the Kirk could not solemnize marriage without appearing before the *inferior* Court of Quarter Sessions. Some member immediately answered, "that contemptible Court," as it is called; when Mr H. said, "yes, as it is styled that contemptible Court," or words to that effect, alluding to an expression said to have been used in one of the petitions on the subject. And I have no

hesitation in stating that the words were not used in the offensive manner in which they are made to appear.

I can confidently appeal to many members who were present—Mr Marks, Mr Manahan, Mr Chisholm, of Halton, Mr McNab—some of whom voted against Mr Hagerman; but I would observe, that the Editor of the Guardian, who was present during the whole of the debate, states decidedly that the words were used in the way I understood them; and surely he is at least a disinterested witness.

I am, Sir, your obedient servant,

JOHN S. CARTWRIGHT.

Kingston, March 28, 1837.

IN one of my private communications to the Editor of the Chronicle and Gazette, soon after the appearance of the report upon the Rectory question, I informed him that the expressions attributed to the Solicitor General respecting the Court of Quarter Sessions, were misrepresented. I am still of that opinion, and I agree in the version of that debate given by Mr Cartwright.

A. MANAHAN.

No. VII. (*See page 52.*)

MESSAGE SENT TO BOTH HOUSES OF THE LEGISLATURES OF THE CANADAS, IN JANUARY 1832, BY THE RESPECTIVE GOVERNORS; CHANGING ONLY THE WORDS REQUIRING CHANGE, IN ORDER TO SUIT THEM TO BOTH HOUSES OF THE DIFFERENT PROVINCES.

J. COLBORNE.

THE Lieutenant Governor has received his Majesty's commands to make the following communication to the House of Assembly, in reference to the lands, which, in pursuance of the Constitutional Act of this Province, have been set apart for the support and maintenance of a Protestant Clergy.

The representations which have at different times been made to his Majesty and his Royal Predecessors, of the prejudice sustained by his faithful subjects in this Province, from the appropriation of the Clergy Reserves, have engaged his Majesty's most attentive consideration.

His Majesty has, with no less anxiety, considered how far such an appropriation of territory is conducive, either to the temporal welfare of the ministers of religion in this Province, or to their spiritual influence. Bound no less by his personal feelings, than by the sacred obligations of that station to which Providence has called him, to watch

over the interests of all the Protestant Churches within his dominions, his Majesty could never consent to abandon those interests with a view to any objects of temporary and apparent expediency.

It has therefore been with peculiar satisfaction that in the result of his inquiries into this subject, his Majesty has found that the changes sought for by so large a proportion of the inhabitants of this Province, may be carried into effect without sacrificing the just claims of the established Churches of England and Scotland. The waste lands which have been set apart as a provision for the Clergy of those venerable bodies, have hitherto yielded no disposable revenue. The period at which they might reasonably be expected to become more productive is still remote. His Majesty has solid grounds for entertaining the hope that before the arrival of that period, it may be found practicable to afford the Clergy of those Churches, such a reasonable and moderate provision as may be necessary for enabling them properly to discharge their sacred functions.

His Majesty, therefore, invites the House of Assembly of Upper Canada, to consider how the powers given to the Provincial Legislature by the Constitutional Act, to vary or repeal this part of its provisions, can be called into exercise most advantageously, for the spiritual and temporal interests of his Majesty's faithful subjects in this Province.

Government House, 25th January, 1832.

No. VIII. (*See page 67.*)

DESPATCH FROM LORD BATHURST, SECRETARY OF STATE FOR THE COLONIES, TO SIR PEREGRINE MAITLAND, K. C. B., LIEUTENANT GOVERNOR OF UPPER CANADA; CONTAINING INSTRUCTIONS TO ERECT AND ENDOW PARSONAGES OR RECTORIES.

(From the Letter of John Strachan, D.D. Archdeacon of York, dated Toronto, 12th December, 1837; and addressed to "My Brethren of the Clergy and Laity.")

DOWNING STREET. 22d July, 1825.

SIR,—“I HAVE received His Majesty's commands to direct, that you do from time to time, with the advice of the Executive Council for the affairs of the Province of Upper Canada, constitute and erect, within every Township or Parish, which now is, or hereafter may be, formed and constituted or erected within the said Province, one or more Parsonage or Rectory or Parsonages or Rectories, according to the Establishment of the Church of England, and that you do from time to time, by an instrument under the Great Seal of the said Province, endow every such Parsonage or Rectory with so much or such parts of the land so allotted and appropriated as aforesaid, in respect of any

lands within such Township or Parish, which shall have been granted subsequently to the commencement of a certain Act of the Parliament of Great Britain, passed in the 31st year of the reign of His late Majesty King George the 3d, entitled, An Act to repeal certain parts of an Act passed in the 14th year of His Majesty's reign, entitled An Act for making more effectual provision for the government of the Province of Quebec in North America, and to make further provision for the government of the said Province, or of such lands as may be allotted and appropriated for the same purpose, by or in virtue of any Instruction which may have been given by his said late Majesty before the commencement of the said Act, as you shall, with the advice of the said Executive Council, judge to be expedient under the existing circumstances of such Township or Parish.

"You shall also present to every such Parsonage or Rectory an Incumbent or Minister of the Church of England who shall have been duly ordained according to the rites of said Church, and supply from time to time, such vacancies as may happen therein.

I have the honor to be, &c.

(Signed). BATHURST."

MAJOR GENERAL

SIR PEREGRINE MAITLAND, K.C.B.

&c. &c. &c.

THE END.