course by an utter disregard of law, and by ignoring the independent exercise of the privileges of the House, and by a violation of right and justice.

We shall not enquire whether the opinion of the Law Officers of England can justly bear any construction more limited; we believe it cannot, and that the most critical interpretation cannot lower its tone or reduce its meaning below that we have given. Respecting as we do this opinion for its high toned sentiment and manly vindication of British principle, and greatly prizing its bearing on the present inquiry, we are happy that while it commends itself to our own sense of legal and constitutional right, we believe it will be accepted by the intelligence and right feeling of the people.

There are a number of persons whom we deem to be ineligible, but the amendment of the Attorney General was purposely confined to five, whose ineligibility was shewn from official papers, without aid of other evidence. In this paper, in placing the facts before your Excellency, we shall confine ourselves to three of those cases, because for our present purpose three are as effective as more would be, and the evidence in these three cases is so clear and so simple as to leave no doubt nor room for question on the fact of ineligibility.

We select the cases of Lewis Smith, A. W. McLellan, and A. McNutt Cochran, Esquires. We invite your attentive consideration of those cases, as stated in the amendment moved by the Attorney General; and we put into your hands with this paper the original documents read in the house, regarding the incumbency of these gentlemen. Your Excellency will perceive that the evidence is of the simplest nature, and capable of being presented in official form before the Assembly without inducing material delay in its decision, and we confidently ask whether it does not establish the fact that those three gentlemen held the offices named in the amendment at the time of the election, and that these were offices of profit and emolument. That they were held under the Provincial Government is unquestionable, not only under the legal opinion of the law officers of the Crown alike in England as in Nova Scotia, but from the entirely Provincial character of the Post Office department, and the provisions of the Post Office acts, together with the return of the Postmaster General, and the letter of Mr. Howe when Provincial Secretary, as illustrative of the source of the appointment.

With the knowledge of the ineligibility of these three persons exhibited by official papers from the offices of the public functionaries of your own Government made public to the whole province, we are unable to discover any principle by which the responsibility imposed by this knowledge can be diverted from your Excellency or your advisers.

If your Excellency is to be viewed as standing alone in place of the Sovereign, then on us devolve the privileges and the duties which Her Majesty's constitutional advisers exercise in England, and in that relation we claim the right and assume the responsibility, on the facts supported by the evidence referred to, of advising your Excellency that the acts of the Assembly are not entitled to the consideration they otherwise would merit, and that it is necessary that the prerogative should be exercised, and the question be referred to the judgment of the people, who, as they are the parties affected, are also the final arbiters in an issue so vitally affecting their interests.

If, on the other hand, your Excellency is to be considered not only in the light of the Queen's representative, but also as clothed with some of the functions of a prime minister in England, then must this authority bring with it corresponding responsibilities, and imperatively requires that your Excellency should know and judge and act in every case in which you withdraw from your constitutional advisers the duty and responsibility of judging and acting.

If your Excellency, either in the exercise of your own functions, or through your advisers, is, as we respectfully submit to be the case, bound to know and to consider the course pursued in the Assembly on this occasion, then your Excellency cannot fail to notice that the amendment of the Attorney General proposed the immediate inquiry and investigation, and after enquiry and deliberation, the decision by the House in a case of easy and ample proof which demanded immediate action to avoid consequences unjust, incongruous and mischievous; and that the gentlemen who were charged with ineligibility united in voting down this just and reasonable proposal, and created the majority that screened them from investigation and inquiry; and that the majority that claims to control the Legislature and govern the country would cease to be a majority were those withdrawn who have been incontrovertibly shewn to be ineligible to serve in Parliament.

The House knew that these gentlemen were exercising functions in violation of law, because the evidence was read to them, and the opportunity to present it in official form was asked and refused.

Your Excellency knows the same facts, because the evidence of ineligibility is in your hands while you read this paper, and the journals give you the names on the divisions in the House.

The people of Nova Scotia are informed on the subject, and multitudes are at this moment waiting with the most intense interest to know whether illegal assumption of office, and daring defiance of law with all their consequences are to be ratified and adopted by the highest authority, or whether the prerogative of the Crown will be exercised to check the bold attempt, and in vindication of law and of right to give to the people the decision of the question, affecting as it does their highest interests.

If THEY shall ratify the usurpation, on them will rest the responsibility, as they must bear the consequences.

If, on the contrary, as we believe will be the case, the people shall condemn as arbitrary, unjust, and unconstitutional the conduct that a majority in the House has pursued, thus will law and order be vindicated, and the institutions of the country be preserved from the consequences of a baneful example. But, in either case, your Lordship will stand in the position which should ever be maintained by the Sovereign's representative—using the prerogative for the people's welfare, preserving the highest institution of the country from contempt, and sustaining the majesty of the law.

We stop not to investigate the excuses attempted in the House by the Opposition. These have been debated, and their fallacy, as we believe, clearly exposed. But were there weight in the technical objections raised by the Opposition to the course we proposed, they would yet not justify under the peculiar circumstances, the measures THEY have adopted. Reflect, my Lord, upon the fact.

Men known to be ineligible, because shown to be ineligible by certain and unanswerable evidence, by their own votes created a majority which has attempted to change the Government. There must be a time and a mode by which such men shall be removed from a position they occupy only in violation of law, otherwise the Constitution must be absurdly deficient in the means of maintaining the institutions of the country,—but reason, justice, and the exigencies of public business forbid that in the meanwhile they should exercise functions which it is known now as well as it can be known hereafter they do not possess—if by such exercise rights should be violated, the public business obstructed, and great mischiefs entailed.

Let us trace the consequences of changing the Government on the vote of a majority made up of ineligible parties. The officers of public departments are changed, and the duties of several of them suspended; four elections are run, and the business of legislation retarded.

After a time the ineligible persons by whose means all this has been effected are removed, the present goverment are then in a majority, and again the offices change hands, four elections are again to be run, and again the legislation of the country is obstructed. Here your Excellency beholds the inevitable result of accepting the present votes, as the acts of a "legitimate majority, assuming that the question of ineligibility in what ever mode determined, will be decided according to law.

But this is not all. Suppose—what indeed we have no reason to believe—that all the ineligible members having removed the ground of ineligibility by resignations, should be returned to the House. A majority would then be created based on law, and not as the present—on its violation. To the views of such a majority we would instantly bow with the respect ever due to the opinion of the majority of the representatives of the people while exercising their high functions within the restraints of law and reason, and a third time the offices change hands,—a third time the business of the House is retarded,—and a third time four elections have to be run.

Can your Excellency believe that an intelligent people will or can accept such a mass of incongruities, inflicted at such an enormous cost, as the necessary consequences of Parliamentary Law, or that they will not look, where only they can look, to the Head of the Government to save the country from absurdity so gross and so mischievous, by the exercise of that prerogative which is now recognised as being held for the welfare of the people, to be used in cases of emergency for the prevention of mischief, not otherwise to be averted.

It may be said that the ineligible persons may be retained permanently by the action of the Election Committee, or some other means. To anticipate such an objection we have confined ourselves to the three cases named, of Messrs. Smith, McLellan, and Cochran, because the evidence in these cases is unanswerable, and its effect can be evaded only by violation of the Law

It can be no answer to urge that the injurious consequences which would result from the course pursued by the Opposition, in the event of the Law being ultimately maintained, and the ineligible parties being removed, may be averted by preserving them in their seats, if that result can only be attained by violating the Law.

If all that can be offered to your Excellency be incongruities monstrous and mischievous, on the one hand, and escape from them on the other, by anticipating a violation of Law, and in that violation an overbearing alike of the rights of a large section of the House, and of the people, teaching an example of wide and deleterious influence, of which no estimate can well be formed, we believe that the emergency which calls for the firm exercise of the prerogative is at least not weakened.

It has been said that members on the Government side were also ineligible. The answer was promptly given—Bring forward the case in such form that it may be met, and the rule we seek to apply to the one side, will be cheerfully submitted to on the other.

Again, it has been said that members on the Government side, though not personally ineligible may yet be unseated on objections urged against their election or their majorities. Such results none have a right to anticipate, and their possibility cannot reasonably justify the protecting in their seats and using the votes of persons who are clearly shewn to have been, at the time of Election, and now, ineligible to serve in Parliament.

We beg to remind your Lordship that we speak the views of no mean portion of the people of Nova Scotia, when we ask your Lordship to respect the rights of parties in the House and Country.

The members of Government, and those who sustained them in the House, received over ten thousand votes more than all the other votes given at the last election, and so closely balanced were parties, that a change of twenty five votes would have given the Government a majority of three in the whole House. But it is not to the interest of parties that we would seek to confine your Lordship's attention,—the welfare of the whole Province demands we believe, earnest consideration in the present crisis, for on no question can a people's welfare be more at stake than on one, the solution of which is to determine whether in the highest tribunal of the country—the House of the People's Representatives—the violation of law is to meet not only with immunity, but to secure high reward, and the government of the country is to be achieved by means which, if attempted in any of the many associations by which men in society unite for the prosecution of mere private interests would be met with scorn, and repelled with reprobation.

We are not insensible to the inconveniences of a General Election to the people, and to candidates, and it is no small evidence of the feeling of a large portion of the country, that with these in view, all the members of the House who support the Government, and voted for the Attorney General's amendment, without one exception, have united in a resolution expressing their opinion that the action of the majority in the House had made an immediate dissolution necessary, to enable the people to express their opinion upon the unconstitutional course pursued by that majority.

Nor are we insensible to the responsibility of the advice we give your Excellency, and in view of that responsibility we wish your Lordship to do what we believe the Colonial constitution requires should be done in the present case, that you should leave with us, as your constitutional advisers, that responsibility. We will assume it cheerfully, and take it with us to the hustings, and there ask the sense of the people on the soundness and propriety of our advice.

But if your Excellency will not leave with us that responsibility, but *will* assume its exercise yourself, then we are bound on behalf of the people of Nova Scotia, respectfully but firmly to say to your Excellency that it is one in the exercise of which you can not, upon any ground, ignore officially the existence of facts which you know individually, nor avoid the necessity of considering and judging the conduct of the House, and according to that judgment deciding.

It must ever be kept in mind that the gentlemen in the opposition might in many ways have avoided the emergency that now presses, had they been content that law and right should prevail; and that they have intentionally placed the House in the position it occupies. They, therefore, are alone responsible for the dissolution which we are compelled to seek as the only protection against the wrong they would perpetrate, and on them only must rest the consequences.

In screening from present inquiry ineligible parties, and making use of them in order to wrest the Government into their own hands, it is not surprising that, as they committed a wrong of unprecedented character, they should have made necessary for its remedy a measure also out of the usual course By the exercise of the Prerogative in such a case, your Excellency does not encroach on the privileges or dignity of the House: on the contrary, you but maintain both by rescuing the House from a condition inconsistent alike with its just privileges and true dignity; nor do you constitute yourself the judge of the eligibility of its members as that would ordinarily be understood—but knowing as your Excellency does, the case and the evidence, the suppression of present inquiry, and the use made of that suppression, with the consequences that must follow, you are aware that a course has been pursued unjust and injurious in itself, and that cannot fail to be followed by consequences detrimental in no ordinary degree to the public interests, and for which no remedy exists but the exercise of the Prerogative.

We believe that if the Prerogative were allowed in such a case to remain inert and ineffectual, your Excellency would fail to use the means which the constitution places in your hands for protecting the people's rights, and would thus adopt and aggravate the wrong.

We send with this paper the original documents read by the Attorney General in the cases of ineligibility, which have been principally referred to, and also copies of the resolution and amendments moved in the House on the subject.

We have the honor to be,
Your Excellency's
Most obedient servants,
(Signed) J. W. JOHNSTON,
CHARLES TUPPER,
STAYLEY BROWN,
W. A. HENRY,
JOHN McKINNON,
JOHN CAMPBELL,
W. A. BLACK.

MEMORANDUM FOR THE EXECUTIVE COUNCIL.

I have carefully considered the Minute of Council submitted to me, as well as the verbal arguments urged by the Council in favor of an immediate Dissolution of the Assembly in consequence of the vote passed on the 3rd instant, which, it is stated, was passed with the assistance of the votes of certain members alleged to be disqualified from being elected, in consequence of holding office under the Provincial Government.

Did I consider that the duty devolved upon me of determining the eligibility or ineligibility of members returned to sit in the Assembly, the arguments advanced would be unanswerable, and I should feel bound, (having first ascertained that the disqualifications alleged were clearly proved,) to exercise the Royal Prerogative and appeal to the country, before regarding a vote which was passed by members not qualified, to sit in the Assembly.

Such, however, is not the case. Parliament has always asserted its exclusive right to judge of the eligibility of its members, and except in cases where the law has affixed penalties to be recovered in a Court of Justice for sitting and voting contrary to its provisions, this power has always been most jealously maintained, and such is the practice which has been uniformly followed in this Colony.

Did I now permit myself to decide whether these members were eligible or not, I should feel that I was usurping a power which does not belong to me.

The House, while I believe it has the undoubted right to judge in these matters, is bound by the Law, and like a Court of Justice, has little discretion left to it, beyond interpreting the law and executing its provisions.

The prerogative of the Crown under any circumstances to dissolve is undoubted, but its exercise in a question which must at all times demand the gravest deliberation, and in a case, such as is the present, of an Assembly only just elected, when the opinion of the Electors has been so recently expressed, I think should only be resorted to under the pressure of absolute necessity, either in consequence of the impossibility of carrying on the public business, or on account of the house itself having committed some act so grossly illegal and unconstitutional as to render such a course unavoidable.

Had the house passed a resolution, or an act, giving an expost facto eligibility to the members in question, as suggested in the case submitted by the Attorney General and Solicitor General, it would by that act or resolution have set the law at defiance; and such a step would undoubtedly have called for the exercise of the Royal Prerogative.

But I do not consider that the house, in resolving to leave the decision of the question of ineligibity in the hands of its committees appointed according to law, where the evidence can be taken on oath, and where the Members of Committees are sworn "Well and truly to try the "matter of the petition referred to them, and a "true judgment to give according to evilence," have acted in an illegal or unconstitutional manner; and I have every confidence that the members of the Committees acting under the solemn obligation of an oath, will give their decisions according to law and evidence.

I admit that inconvenience will arise from the delay that must take place in thus arriving at a decision. The House has, however, adopted this course, and the whole of the Members of the Assembly having been returned by the Sheriffs as duly elected, I consider that I am bound to regard their votes until they are unseated by the House, unless I were to usurp the privilege of the Assembly and constitute myself judge of their eligibility.

The inconvenience which may arise from the course adopted by the Opposition in passing a vote of want of confidence before the questioned eligibility of Members voting was settled, is one to which Parliamentary Government must always be liable when contending parties press their rights to extremes.

I have reviewed this question with calmness and deliberation; and I regret that I cannot, under present circumstances, agree to a Dissolution.

I regret this decision, because I feel, from the opinions on Saturday expressed in Council, that it must, at any rate for a time, terminate that official intercourse which has now existed for two years between the Members of my Council and myself.—an intercourse which has always been most gratifying to me, and one which, if circumstances change, I shall always be happy to renew.

I thank the members of the Council, both individually and collectively, for the manner in which they have at all times co-operated with me in carrying on the public business, and for the courtesy with which they have uniformly received any suggestion I have made to them; and I trust that they on their part will feel that I have ever been ready to accord to them every constitutional assistance and support in my power; and that it is only a sense of duty that obliges me to refuse their request in the present instance.

MULGRAVE.

Government House, Halifax, N.S.
Feb. 6, 1860.

HALIFAX, FEB 7TH, 1860.

MY LORD,—We, the undersigned members of the Executive Council, hasten to acknowledge the receipt of your Excellency's refusal to accept our advice tendered on Saturday last, in which we proposed a dissolution of the Assembly and an immediate appeal to the people, on the flagrant violation of law exhibited by a majority of the House.

Having thus conscientiously discharged the duty which we imperatively owed to our country and to your Excellency, it only remains for us respectfully to request your Excellency to accept the resignation of our seats at the Council Board, and the offices we respectively hold.

In thus asking to be relieved from a position which we can no longer occupy with honor to ourselves, or advantage to the country, permit us to add our united thanks for the courteous consideration we have ever received from your Excellency during the period we have had the honor of holding the position of the constitutional advisers of your Excellency.

(Signed) J. W. JOHNSTON,
CHARLES TUPPER,
W. A. HENRY,
STAYLEY BROWN,
JOHN McKINNON,
JOHN CAMPBELL,
W. A. BLACK.

GOVERNMENT HOUSE
Halifax, N. S.,
7th Feb., 1860.

GENTLEMEN,—I beg to acknowledge the receipt of your communication of this day's date, tendering to me the resignation of your seats at the Council Board, and the offices you respectively hold. And I have now only to request that you will continue to hold them until I am able to appoint your successors.

In accepting your resignations I again express my regret at the termination of our Official intercourse.

(Signed) MULGRAVE.
TO THE MEMBERS OF THE EXECUTIVE COUNCIL.

WEDNESDAY, Feb, 8.

The House opened at 12 o'clock.

The resignation of Alpin Grant Esq., Queen's Printer was handed in by the Hon. Provincial Secretary.

Mr. Wade presented a petition from Charles Allison against the return of Lewis Smith for Queens County, and moved that it be taken into consideration on Wednesday next, the 15th.

Hon. Mr. Young objected to the motion, as gentlemen on his side of the House in all probability would be absent running their elections. It was their intention to adjourn over to Tuesday the 12th of March, for the purpose of running the elections. The seats of the sitting members might be endangered by Committees drawn in their absence.

Mr. Wade thought such a course would be a waste of time and of the public money, the business of the house might still be proceeding notwithstanding the absence of those gentlemen.

Hon. Attorney General said the remarks of Mr. Young went to prove what had been before only hinted at—that the committees were to be partial. The deferring of the action in drawing committees was clearly that there might be a majority to govern that action. Observations had been made by the Hon. Member for Windsor that a dozen on the Government side would be objected to. This was doubtless the origin of the petitions against them. The delay would be unjust to petitioners and would make it necessary for the session to be extended into June or else neglect the business of the country.

Mr. Howe compared the House to a jury; and his friends wished to have their panel full or their clients might suffer. He thought the sitting member should be protected as well as the petitioner. He would not give an opportunity for action such as that in the Canadian Assembly where the defeated candidates took ad-