

SUBSTANCE OF THE
REPORT ON THE AFFAIRS
OF
BRITISH NORTH AMERICA,
FROM THE EARL OF DURHAM, HER MAJESTY'S
HIGH COMMISSIONER.
(Presented by Her Majesty's Command to both Houses
of Parliament.)
TOGETHER WITH THE MOST INTERESTING PARTS OF
LORD DURHAM'S CORRESPONDENCE
WITH LORD GLENELG.

[CONTINUED.]

But the most bold and extensive attempt for erecting a system of patronage wholly independent of the Government, was that which was for some time carried into effect by the grants for education made by the Assembly, and regulated by the Act which the Legislative Council has been most bitterly reproached with refusing to renew. It has been stated, as a proof of the deliberate intention of the Legislative Council to crush every attempt to civilize and elevate the great mass of the people, that it thus stopped at once the working of about 1,000 schools, and deprived of education no less than 40,000 scholars, who were actually profiting by the means of instruction thus placed within their reach. But the reasons which induced, or rather compelled, the Legislative Council to stop this system, are clearly stated in the Report of that body; which contains the most unanswerable justification of the course which it pursued. By that it appears, that the whole superintendence and patronage of these schools had, by the expired law, been vested in the hands of the county members; and that they had been allowed to manage the funds, without even the semblance of sufficient accountability. The Members of the Assembly had thus a patronage, in this single department, of about £25,000 per annum, an amount equal to half of the whole ordinary civil expenditure of the province. They were not slow in profiting by the occasion thus placed in their hands; and as there existed in the province no sufficient supply of competent schoolmasters and mistresses, they nevertheless immediately filled up the appointments with persons who were utterly and obviously incompetent. A great proportion of the teachers could neither read nor write. The gentleman whom I directed to inquire into the state of education in the province, showed me a petition from certain schoolmasters which had come into his hands; and the majority of the signatures were those of marksmen. These ignorant teachers could convey no useful instruction to their pupils; the utmost amount which they taught them was to say the Catechism by rote. Even within seven miles of Montreal, there was a schoolmistress thus unqualified. These appointments were, as might have been expected, jobbed by the members among their political partisans; nor were the funds very honestly managed. In many cases the members were suspected, or accused, of misapplying them to their own use; and in the case of Beauharnois, where the seigneur, Mr. Ellice, has, in the same spirit of judicious liberality by which his whole management of that extensive property has been marked, contributed most largely towards the education of his tenants, the school funds were proved to have been misappropriated by the county member. The whole system was a gross political abuse; and however laudable we must hold the exertions of those who really laboured to relieve their country from the reproach of being the least furnished with the means of education of any on the North American continent, the more severely must we condemn those who sacrificed this noble end, and perverted ample means to serve the purposes of party.

I know not whether to ascribe the system which was adopted for the relief of the distress periodically occurring in certain districts to the same policy of extending the influence of the Assembly by local grants, or merely to the antiquated prejudices which seem to have pervaded many parts of the Assembly's legislation, which dictated laws against hucksters and the maintenance of foundling hospitals. No general system for the relief of destitution, no poor law of any kind was established, and the wants of the country hardly demanded it. But when I arrived at Quebec, I received a number of petitions from parishes situated on the lower part of the Saint Lawrence, praying for relief, in consequence of the failure of the harvest. I found on inquiry, that relief had been granted to these districts for several successive years. The cause of the calamity was obvious: it was the unsuitableness of wheat crops under the wretched system of Canadian small farming to the severe climate of that portion of the province. By the side of the distressed parishes were large districts in which a better system of farming, and above all, the employment of the land for pasture and green crops had diffused the most general comfort among the agricultural population, and completely obviated the occurrence of failure or distress. There were, in the vicinity of the distressed parishes, large tracts of rich and unsettled land, available for the permanent amelioration of the condition of this suffering people; and there were valuable and extensive fisheries in the neighbourhood, which might have supported it in comfort; yet no persevering attempt had been made to provide permanent relief by encouraging the population which was thus thrown on the Legislature for support, either to adopt a better system of agriculture, or to settle on other portions of the country, or to avail itself of the fisheries. The Assembly met the evil by relieving the distress in such a way as to stave off its immediate results, and insure its recurrence. It gave food for the season of scarcity, and seed to sow a crop even of wheat as late as the 20th of June, which was of course to fail in its turn; for it had thus relieved the same kind of distress, in precisely the same places, for several successive years; and its policy seemed to be to pension a portion of the people to sow wheat where it would not ripen.

In the mere contest for power, opportunities for useful legislation were lost. Manifold and deeply rooted abuses were suffered to pervade every department of the Government. The working of the system, which makes the Governor, not really the representative of the Sovereign, but a person employed by the Secretary of State, prevents the vigorous administration of the Royal prerogative; while even the details of the government are committed to the Colonial Department. The practice of reserving bills for the Royal assent, renders the whole course of legislation uncertain. The most important business is transacted in a private correspondence between the Governor and the Colonial Office, so that the people are ignorant of the proceedings of their Government.

There is no responsibility of the Executive Council, the real advisers of the Government. Almost all the details of the Colonial administration pass through the Civil Secretary's office; for there is nothing like methodized arrangement of duties.

There is no regular administration in the rural districts—not even a Mayor, Sheriff, or Constable.

There are no Municipal institutions, among a people who want energy and self-governing habits which enable the Anglo-Saxon population to combine whenever a necessity arises.

The parishes are purely ecclesiastical divisions, which may be altered by the Bishops; there are no hundreds, or corresponding subdivisions of counties; the counties seem to have been constituted merely for the purpose of electing members to the Assembly. The only institution of the nature of local management, in which the people have any voice, is the *fabrique*, by which provision is made for the repairs of Catholic churches. The townships are inhabited entirely by settlers of British and American origin, who complain of the laws which prevent them from establishing local self-government similar to that which the American citizens in the state of Vermont enjoy. It is in Montreal and Quebec that the want of municipal institutions is most glaring. A temporary Provincial Act, passed some years ago, incorporated these cities; but in 1836 its renewal was refused; and since that time, they have been without municipal institutions, and in a most disgraceful state: they are not lighted at all.

The Law of the Province is a mass of incoherent, conflicting enactments, part French, part English. The Criminal Law is the Criminal Law of England, as introduced in 1771, with modifications since made by the Provincial Legislature, but it is now disputed whether the Provincial Legislature had power to make any alteration in that law; and it is not clear what is the extent of the phrase "Criminal Law." The Civil Law is the ancient civil law, modified in some, but unfortunately very few, respects. The French law of evidence prevails in civil cases, not commercial; in commercial cases the English law is adopted, but no two lawyers agree in the definition of "commercial."

There are four superior districts for judicial purposes—Quebec, Montreal, Three Rivers, and St. Francis—with unlimited, supreme, and original jurisdiction; and one, Gaspé, with limited jurisdiction. There was much difficulty in obtaining any information about the administration of justice in Gaspé. After a long enquiry, it was discovered that there was a Coroner in the district, only by an estimate for his salary being found.

In Quebec there is a Chief Justice with three Puisne Judges; and the same in Montreal. Three Rivers and St. Francis have each one Judge. An attempt to introduce Circuits has failed; and almost all cases are brought before the Court at the chief places of the districts. Complaints are made of excessive fees to officers of the Courts; but the chief grievance is the necessity of bringing cases where the amount litigated is more than £10, to the district towns, from the distant extremities of the large districts. "Commissioners of Small Causes," appointed by a clerk in the Civil Secretary's Office on application from a certain number of parishioners, have jurisdiction over debts not exceeding 25 dollars, or £6 5s. currency. These men are generally incompetent; and the manner of their appointment creates dissatisfaction. Lord Durham has urged to abolish all these tribunals, on the ground that, being composed entirely of disaffected French Canadians, they harassed loyal subjects by entertaining actions against them. There is no appeal from their decision; and they had given damages against loyal persons for acts done in discharge of their duty, and judgment in default against persons absent as Volunteers in the Queen's service; enforcing their judgments by levying distresses on their property.

The Appellate Jurisdiction is vested in the Executive Council; a body consisting for the most part, of persons having no legal qualifications whatever. The evil working of this part of the judicial machinery is thus described—

"The Executive Council sits as a Court of Appeal, four times in the year, and for the space of ten days during each session. On these occasions, the two chief Justices of Quebec and Montreal were, *ex-officio*, Presidents; and each in turn presided when appeals from the other's district were heard. The laymen who were present to make up the necessary quorum of five, as a matter of course left the whole matter to the presiding Chief Justice, except in some instances in which party feeling or pecuniary interests are asserted to have induced the unprofessional members to attend in unusual numbers, to disregard the authority of the Chief Justice, and to prevent the law. In the general run of cases, therefore the decision was left to the President alone; and each Chief Justice became, in consequence, the real Judge of Appeal from the Court of other district. It is a matter of perfect and undisturbed notoriety, that this system has produced the results which ought to have been

foreseen as inevitable; and that, for some time before I arrived in the province, the two Chief Justices had constantly differed in opinion upon some most important points, and had been in the habit of generally reversing each other's judgments. Not only, therefore, was the law uncertain and different in the two districts, but, owing to the ultimate power of the Court of Appeal, that which was the real law of each district, was that which was held not to be law by the Judges of that district."

There is not the slightest provision for Criminal Justice except at the principal towns of the five districts; to which all offenders must be brought. There are gaols in the chief towns of the five districts, and three county gaols. "There are Sheriffs in the districts, and not each county," appointed and removable by the Crown. These offices are very lucrative; and have been disposed of from personal or political favouritism. Severe loss has been sustained by the defalcations of Sheriffs, from whom insufficient security has been taken.

There is no Jury Law whatever; "Mr. Viger's Jury Act" which removed some old abuses in the selection of Juries, and established a tolerably fair method of choosing them, having expired in 1836. The composition of Juries is entirely in the hands of the officers of Government; who can privately instruct the Sheriff. When Lord Durham arrived in the province, he was assured by one party that the Juries would never convict the persons then waiting for the trial on a charge of participation in the rebellion; and by another, that the prisoners would be tried by packed Juries, and the most clearly innocent would be convicted. In the minds of the people there is not the slightest confidence in the administration of criminal justice. The French complain of English, the English of French Juries; and both quote instances to support charges of glaring partiality in verdicts. Trial by Jury, therefore, in Lower Canada, commands respect, and provides impunity for every political offence.

Among the Magistrates, the "Unpaid Justices" of Lower Canada, are to be found "the most disreputable persons of both races;" while the more respectable Canadians have been left out of the commission of the peace without any adequate cause. The "greatest want of confidence in the practical working of the institution exists." The general belief is, that the appointments have been made with a party and national bias.

The Police of Montreal and Quebec is lamentably defective; though, from the vicious and lawless character of a great part of its population, no city more requires a vigilant Police than Quebec. Throughout the rest of the province there is no Police at all; the Militia, which used to discharge the functions of a Police, being now disorganized. In the course of last autumn, a man who had notoriously committed a murder at St. Catherine's forty six miles from Quebec, was at large a fortnight after the act, and there were no means of executing a warrant against him. At last, two Policemen sent from Quebec, as Special Constables, arrested him. When Theller and Dodge escaped from the Citadel, there were no means of stopping them, except by sending Policemen from Quebec to the very frontier of the United States.

The means of Education are defective; but little information in addition to the important details incidentally given in a previous part of the Report is communicated in this resume. The Commissioner of Education framed a series of questions calculated to elicit minute and ample information; but he had obtained very few replies to his inquiries, at the time when his labours, with those of the High Commissioner, were brought to a close. A competent person has, however, been engaged to receive and digest the further returns that may be expected. The clergy of all sects evince a great reluctance to the interference of Government in the education of the people; but the laity are more liberal; and a strong popular Government soon establish a general system of public education. All that the British Government has done in connexion with this subject, has been to apply the Jesuits' estates, part of the property destined to the purposes of education, to a species of fund for secret service. The Government has for many years maintained a struggle with the Assembly to continue this misappropriation.

Information respecting Hospitals, Prisons and Charitable Institutions, has been collected by Sir John Dorrit, and is published separately in an Appendix to the Report. Lord Durham had not time to institute that searching inquiry into the subject which he felt to be desirable; but he calls especial attention to the want of a public establishment for the insane, the bad state of the prisons, the defects of the quarantine station at Grosse Isle; the low and ignorant state of the medical professions in the rural districts, and the necessity of changing the system of providing for the invalid poor, and foundlings, who are now supported by payments of public monies to convents.

From strictly Religious differences Lower Canada is fortunately free. The character of the Catholic Clergy of the Province is very highly rated. Lord Durham knows "no parochial clergy in the world, whose practice of all the Christian virtues, and zealous discharge of their clerical duties, is more universally admitted or has been productive of more beneficial consequences." But the necessity of extending Catholic institutions with the growth of the population is apparent. The question of Clergy Reserves—land set apart for the maintenance of "Protestant Clergy"—is keenly discussed among the various sects of Protestants who prefer claims to a share in the funds. It is not agreed as to who are exclusively the Protestant Clergy. The apprehension of measures tending to establish a predominant sect, has produced irritation, which has nearly deprived the Government of the support of some portion of the British population.

The Revenue is derived chiefly from du-

ties on imports from Great Britain and other countries. The amount has fallen off during the last four years, from £150,000 to £100,000; principally in consequence of the diminished consumption of spirituous liquors and the growth of native manufactures. The permanent expenditure of the Government being only £60,000 a year—though a vigorous and efficient Government would find the whole revenue hardly adequate to its necessities—there remains a surplus of £40,000 to be applied to the jobbing purposes already noticed. Two-fifths of the revenue from imports is paid to Upper Canada; and much dissension and dissatisfaction arises from this source. The revenue of Upper Canada being unequal to its expenditure, an increase of the customs duties is required; but this cannot be effected without increasing the taxation of Lower Canada, which possesses a surplus revenue already.

The Post office establishment is common to all the North American Provinces, and is under the control of the General Office in London. It yields a surplus revenue of £10,000 per annum; which is remitted to England. This practice causes much dissatisfaction; and its discontinuance is strongly recommended. The officials possess indirectly the privilege of franking: the English Post-office does not allow them that immunity, but the postage of all franked letters is paid out of the Provincial Treasury.

There is very little direct taxation in Lower Canada; but Lord Durham considers that the privilege has been dearly purchased by the privation of many institutions which every civilized community ought to possess.

UPPER CANADA.

The information respecting the state of the Upper Province not having been acquired by actual administration of the Government, was not so ample and detailed as that respecting Lower Canada; but sufficient to enable the High Commissioner to point out the principal causes of the late troubles. The quarrel was entirely among the British, if not the English, population; and it is difficult to make out the real object of the struggles, or to discover a motive sufficiently strong to induce any large mass of the people to unite for the purpose of overthrowing the Government. The difficulty is increased by the ignorance of the people themselves; who, being scattered along an extensive frontier, and having little intercommunication, made contradictory, incorrect, and false statements of the origin of the discontent and the events of the insurrection. The Report, however, supplies sufficient causes of dissatisfaction.

A few persons had gained an ascendancy in the Executive Council, which enabled them to establish a union, called "the Family Compact,"—though, in truth, there is little family connexion among the parties. These men engrossed the offices of the Government among themselves or distributed them among their adherents. The Churches, the Bench of Justice, the Magistracy, and the legal profession, are filled by the adherents of this party. Great discontent was the consequence; and a majority was elected to the Assembly, opposed to that party in power. This majority directed their efforts to obtain the responsibility of the Executive Council; and it is on this question, mainly, that the struggle between the Reformers and the Official party has been carried on in Upper Canada. All that the Reformers required was, that the Governor of the Colony, like the Sovereign of the Mother Country, should intrust the administration of affairs to persons possessing the confidence of a majority of the Representatives of the people.

There was much local jobbing, and profligate expenditure of the public money in canals and public works; whence, chiefly, has arisen a heavy debt of a million sterling.

The Reforming and Official parties formerly consisted of native Canadians; but within these few years the emigrants have become numerous. Part side with the Officials, of whom the majority are half-pay officers; others, generally of the humbler classes, take part with the Reformers. Both classes are viewed with jealousy by the native Canadians; and are subject to certain disqualifications which place them in some degree in the position of aliens.

Sir Francis Head had to deal with these discordant elements; and he endeavoured, by displacing three unpopular members of the Executive Council, and selecting two members of the Reform party and one gentleman who never interfered with politics, to break the power of the Family Compact. But Sir Francis soon disgusted his allies, by appointing to office, without consulting the Council, some members of the Official party. He thus lost the support of the Assembly, and was thrown back upon the Official party support. By the unscrupulous exertion of the influence of Government, and especially in the opportune completion of certain land titles to voters, he secured a majority in the Assembly at the election in 1833; but this majority sided with their friends in the Executive Council; and the result of Sir Francis Head's proceeding was to consolidate the power of the Official party, of which he aimed at making himself independent.

His proceedings at the election have caused much exasperation. No economical reforms were afterwards attempted. Nothing was done to satisfy the triumphant party; whose aim was practical improvement, not the mere consolidation of the power of the Family Compact, to which Governor Head succumbed.

However, notwithstanding the general irritation, the rebel Mackenzie received the support of only "a few unprincipled adventurers and heated enthusiasts." The Reformers aimed at securing their object only by constitutional means.

By a law passed immediately after the last war with the United States, American citizens are prohibited from holding land; and it is to the uncertainty of the titles which many Americans possess to the lands on which they have squatted, that the disloyalty

of that population in the Western districts attributed.

By a stretch of power, the session of the Parliament of 1836 was continued after the death of William the Fourth. But there must be a new election in 1840; till which time, the Reformers would probably remain quiet, were it not that the establishment by Sir John Colborne of fifty seven Rectories has brought the question of the Clergy Reserves prominently forward.

It is understood that the Rectors, excepting that they are precluded from levying tithes, are in precisely the same condition in every other respect as clergymen of the Church of England. This is regarded by all other teachers of religion as degrading them to a position of legal inferiority to the Clergy of the Church of England, and has been resented most warmly. The question absorbs public attention; and on this practical point issue must sooner or later be joined, in all the constitutional questions existing in the province. The settlement of this question, which cannot be settled on the principle of establishing a predominant sect, is necessary to the pacification of Upper Canada. The members of the Anglican Church are a minority, and likely to continue so; and the other Protestant sects will not permit them to engross the revenue provided for the support of the Protestant religion. Lord Durham recommends, as the only means of pacification, a repeal of all the acts of the Imperial Legislature relative to the Clergy Reserves, and that the disposal of the funds should be left to the Local Legislature.

The High Commission also advises, that Orangeism should be discouraged, not sanctioned, as it was by Sir Francis Head; who refused to take any steps to prevent the formation of Orange Lodges, even though called upon by the House of Assembly, in consequence of Orange outrages at elections.

Other cause of complaint are the union of judicial and political functions in the Chief Justice: the appointment of Sheriffs from among the dominant party; the composition of the Magistracy, the want of roads, Post Offices, Mills, Churches, Schools,—by far the most valuable portion of the land originally devoted to the support of schools throughout the country having been devoted to the endowment of the University, from which residents in Toronto alone derive benefit. Discontent and restlessness, the results of general depression, are observable in the bulk of the population. The restrictions on trade, by which the importation of articles from the United States is prohibited, has led to extensive smuggling, especially of tea, and to a general wish that the province should be allowed to make use of New York as a port of entry. At present, all importers must receive their articles by the St. Lawrence; the navigation of which river opens several weeks later than the time at which goods might be procured in all parts of the Province bordering on Lake Ontario. Hence, great inconvenience, and loss of time and capital. The financial relations with Lower Canada impede the spirit of improvement, which has been manifested in the Upper Province by the attempts to form immense canals, by which sea-going vessels might navigate the whole of the St. Lawrence to the head of Lake Huron. But the Lower Province refuses to execute its share of the noble undertaking. The means of completing the works, which have cost so much, cannot be raised without the consent of Lower Canada to increase the customs duties; which, of course, cannot now be obtained. Under these discouraging circumstances, "it cannot be a matter of surprise that many of the most enterprising colonists of Upper Canada look to that bordering country, in which no great industrial enterprise ever feels neglect or experiences a check, and that men the most attached to the existing form of government, would find some compensation in a change whereby experience might bid them hope that every existing obstacle might be speedily removed, and each man's fortune share in the progressive prosperity of a flourishing state."

THE EASTERN PROVINCES AND NEWFOUNDLAND.

The information which Lord Durham is enabled to communicate respecting the other North American Colonies is comparatively limited. In all of them, as in the Canadas, representative government is coupled with an irresponsible Executive; their are frequent collisions between the different branches of the Government; want of Municipal institutions, and perpetual interference of the Imperial Administration in matters which ought to be left wholly to the Provincial Governments. In New Brunswick there has been an approach to sound constitutional practice: the entire revenues have been placed under the control of the Assembly; the old Official party has been deprived of administrative power which is now lodged in the hands of those whom a majority of the Assembly support; and the result is, that the government of New Brunswick, till lately one of the most difficult in the North American Colonies, is now the most harmonious and easy.

In Nova Scotia, an approximation has been made to the same judicious course, and with good effect; but there is a matter of complaint, that "the Church of England should have been suffered to retain a majority in both Councils, notwithstanding the remonstrances of the House and the precise and explicit directions of the Colonial Secretary." Such was the complaint of one of the most respectable inhabitants of the colony to the High Commissioner.

Prince Edward's Island, small in extent and with a scanty population of 40,000, yet possesses a genial climate and a soil peculiarly adapted for the production of grain. It is well situated for the supply of adjacent colonies; but, instead of being the granary of the British Provinces, it barely supports its own population. This state of things is the result of "a fatal error, which stifled its prosperity in the very cradle of its existence."

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