

LOWER CANADA.

Copy of a Message from His Excellency the Governor in Chief, with a copy of the inclosure therein referred to. Received by the House of Assembly, Friday, 15th November, 1831.

“*Avancez, Gouverneur en Chef.*
The Governor in Chief, in pursuance of orders from His Majesty's Government which have been communicated to him, transmits to the House of Assembly, copy of a despatch dated the 7th of July last, addressed to His Excellency by Viscount Goderich, His Majesty's Principal Secretary of State for the Colonial Department, having reference to the Petition of the House of Assembly touching certain matters of complaint, addressed to the King, and transmitted during the last Session of the Provincial Parliament at their desire, by the Governor-in-Chief to Viscount Goderich, for the purpose of being laid at the foot of the Throne. In this communication, which is copied word for word from the original despatch, the House of Assembly will not fail to trace the paternal feelings of His Majesty towards his faithful Canadian subjects, and his anxiety to comply with all their reasonable desires.”

“Castle of St. Lewis.
Quebec, 16th Nov. 1831.”

Copy of the despatch.
Downing-Street, 7th July, 1831.
My lord, I have received, and have laid before the King, your Lordship's Dispatches of the 5th, 6th, and 7th, April last, Nos. 24, 25 and 26.

Your Lordship's assurance of the favourable change in the general disposition of the House of Assembly of Lower Canada towards the close of their last Session, and your Report of the warm attachment borne by the people at large to His Majesty's Person and Government, and to the constitution under which they live, have been received by His Majesty with lively satisfaction.

The King has been also graciously pleased to express His approbation of the efforts made by your Lordship to ascertain with precision the full extent of the grievances of which the Assembly consider themselves entitled to complain; and assuming, in concurrence with your Lordship, that the address of the Assembly contains a full development of those grievances, the exposition which is to be there found of the views of that body, justifies the satisfactory inference that there remains scarcely any question upon which the wishes of that branch of the Legislature are at variance with the policy which His Majesty has been advised to pursue, and I therefore gladly anticipate the speedy and effectual termination of those differences which have heretofore so much embarrassed the operations of the local government.

No office can be more grateful to the King than that of yielding to the reasonable desires of the Representative body of Lower Canada, and whilst His Majesty's servants have the satisfaction of feeling, that upon some of the most important topics referred to in the address of the Assembly, its wishes have been anticipated, they trust that the instructions which I am now about to convey to you will still further evince their earnest desire to combine with the due and lawful exercise of the constitutional authorities of the Crown an anxious solicitude for the well being of all classes of his faithful subjects in the Province.

I proceed to notice the various topics embraced in the address of the Assembly to the King.

I shall observe the order which they have followed, and with a view to perspicuity, I shall preface each successive instruction which I have His Majesty's commands to convey to your Lordship, by the quotation of the statements made upon the same topic by the Assembly themselves.

Firstly.—It is represented that the progress which has been made in the education of the people of the Province, under the encouragement afforded by the recent acts of the Legislature, has been greatly impeded by the diversion of the Revenues of the Jesuits' Estates, originally destined for this purpose.

His Majesty's Government do not deny that the Jesuits' Estates were, on the dissolution of that order, appropriated to the education of the people, and I readily admit that the revenue which may result from the property should be regarded as invariably and exclusively applicable to that object.

It is to be regretted undoubtedly that any part of those funds were ever applied to any other purpose, but although in former times your Lordship's predecessors may have had to contend with difficulties, which caused and excused that mode of appropriation, I do not feel myself now called upon to enter into any consideration of that part of the subject.

If, however, I may rely on the returns which have been made to this department, the rents of the Jesuits' Estates have, during the last few years, been devoted exclusively to the purpose of education, and my despatch dated the 24th December last, marked “separate,” sufficiently indicates that His Majesty's Ministers had resolved upon a strict adherence to that principle several months before the present address was adopted.

The only practical question which remains for consideration is whether the appropriation of these funds for the purpose of education should be desecrated by His Majesty or by the Provincial Legislature.

The King cheerfully, and without reserve, confides that duty to the Legislature, in the full persuasion that they will make such a selection amongst the different plans for this purpose, which may be

presented to their notice, as may most effectually advance the interests of religion and sound learning amongst his subjects; and I cannot doubt that the Assembly will see the justice of continuing to maintain under the new distribution of these funds, those scholastic establishments to which they are now applied.

Understand that certain buildings in the Jesuits' Estates which were formerly used for collegiate purposes, have since been uniformly employed as a barrack for the King's troops. It would obviously be highly inconvenient to attempt any immediate change in this respect, and I am convinced that the Assembly would equally regret any measure which might diminish the comfort or endanger the health of the King's forces. If, however, the Assembly should be disposed to provide adequate barracks, so as permanently to secure those important objects, His Majesty will be prepared (upon the completion of such an arrangement in a manner satisfactory to your Lordship) to acquiesce in the appropriation of the buildings in question to the same purposes as those in which the general funds of the Jesuits' Estates are now about to be restored.

I should fear that ill-founded expectations may have been indulged respecting the value and productiveness of the Jesuits' Estates. In this, as in most other cases, concealment appears to have been followed by exaggerations as its natural consequence. Had the application of the proceeds of these estates been granted, much misapprehension would probably have been dispelled. My regret, from the effect of your decision to withhold these accounts, does not, however, render me insensible to the propriety and apparent weight of the motives by which your judgment was guided; disavowing, however, every wish for concealment, I am to instruct your Lordship to lay these accounts before the Assembly in the most complete detail at the commencement of their next session, and to supply the House with any further explanatory statements which they require respecting them.

It appearing that the sum of £7,154 15s. 4d. has been recovered from the late Mr. Caldwell's property, in respect of the claims of the Crown against him on account of the Jesuits' Estates, your Lordship will cause that sum to be placed at the disposal of the Legislature for general purposes. The sum of £1,280 3s. 4d. which was also recovered on account of the same property, must also be placed at the disposal of the Legislature; but should, with reference to the principles already noticed, be considered as applicable to the purposes of education exclusively.

Secondly.—The House of Assembly represent that the progress of education has been impeded by withholding the grants of land promised for schools in the year 1801.

On referring to the speech delivered in that year by the Governor to the two Houses of the Provincial Legislature, I find that such an engagement as the address refers to was actually made. It of course, therefore is binding on the Crown, and must now be carried into effect, unless there be any circumstance of which I am not apprized, which may have cancelled the obligation contracted in 1801, or which may have rendered the fulfilment of it at the present time impracticable. If any such circumstances really exist, your Lordship will report them to me immediately, in order that the fit course to be taken may be further considered.

Thirdly.—The rejection by the Legislative Council of various Bills in favour of education, is noticed as the last of the impediments to the progress of education.

Upon this subject it is obvious that His Majesty's Government have no power of exercising any control, and that they could not interfere with the free exercise of the discretion of the Legislative Council, without the violation of the most undoubted maxims of the constitution. How far that body may have actually counteracted the wishes of the Assembly on the subject, I am not very exactly informed, nor would it become me to express an opinion on the wisdom or propriety of any decision which they may have formed of that nature. The Assembly, however, may be assured that whatever legitimate influence His Majesty's Government can exercise, will always be employed to promote in every direction all measures which may have for their object, the religious, moral or literary instruction of the people of Lower Canada.

Fourthly.—The address proceeds to state that the management of the waste lands of the Crown have been vicious and improvident, and still impedes the settlement of those lands.

This subject has engaged, and still occupies my most anxious attention, and I propose to address to your Lordship upon it, at length, in a separate despatch. The considerations connected with the settlement of waste lands are to numerous and extensive to be conveniently embodied in a despatch embracing so many other objects of discussion.

Fifthly.—The exercise by Parliament of its power of regulating the trade of the Province is said to have occasioned injurious uncertainty in mercantile speculations and prejudicial fluctuations in the value of real estates, and of the different branches of industry connected with trade.

It is gratifying to find that this complaint is connected with a frank acknowledgment that the power in question has been beneficially exercised, on several occasions, for the prosperity of Lower Canada. It is, I fear, an unavoidable consequence of the connection which happily subsists between the two countries, that Parliament should occasionally require of

the commercial body of Lower Canada some mutual sacrifices for the general good of the empire at large. I therefore shall not attempt to deny that the changes in the commercial policy of this Kingdom during the last few years may have been productive of occasional inconvenience and loss to that body, since scarcely any particular interest can be mentioned in Great Britain, of which some sacrifice has not been required during the same period.

The most which can be effected by Legislation, on such a subject as this, is a steady, though gradual advance, towards those great objects which an enlightened system of commercial regulations contemplates. The relaxation of restrictions on the trade of the British Colonies, and the development of their resources have been kept steadily in view amidst all the alterations to which the address refers, and I confidently rely on the candour of the House of Assembly to admit, that upon the whole no inconsiderable advance towards those great ends has been made. They may rest assured that the same principles will be steadily borne in mind by His Majesty's Government in every modification of the existing law which they may at any future time have occasionally to recommend to Parliament.

Sixthly.—The Assembly in their address proceed to state that the inhabitants of the different towns, parishes, townships, extra parochial places and counties of the Province, suffer from the want of sufficient legal power for regulating and managing their local concerns.

I am happy in the opportunity which at present presents itself of demonstrating the desire of His Majesty's Government to co-operate with the local Legislature in the redress of every grievance of this nature. The three Bills which your Lordship reserved for the consideration of His Majesty's pleasure in the last Session of the Assembly, for establishing the parochial divisions of the Province, and for the incorporation of the Cities of Quebec and Montreal, will be confirmed, and finally enacted by His Majesty in Council with the least possible delay, and I expect to be able very shortly to transmit to your Lordship the necessary Orders in Council for that purpose.

I very sincerely regret that the bill passed for the legal establishment of parishes in the month of March, 1829, should have been defeated by the delay which occurred in transmitting the official confirmation by the King in Council; many months elapsed after its arrival in this Kingdom before that form could be observed, and His late Majesty's protracted illness delayed still longer the bringing it under the consideration of the King in Council.

If it should be the opinion of the Colonial Legislature that additional provisions are wanting to enable the local authorities in counties, cities or parishes, to regulate their own more immediate affairs, your Lordship will understand that you are at liberty to assent in His Majesty's name to any well considered laws which may be presented to you for that purpose.

Seventhly.—I proceed to the next subject of complaint, which is, that uncertainty and confusion has been introduced into the Laws for the security and regulation of property, by the intermixture of different codes of Laws and rules of proceeding in the Courts of Justice.

The intermixture to which the Address refers, so far as I am aware, arises from the English criminal code having been maintained by the British Statute of 1774, and from the various acts of Parliament which have introduced into the Province the soccage tenure, and subjected all lands so holden to the English rules of alienation and descent.

As a mere matter of fact there can be no doubt, that the infusion of these parts of the law of England with the Provincial Code, was dictated by the most sincere wish to promote the general welfare of the people of Lower Canada. This was especially the case with regard to the Criminal Law, and is sufficiently apparent from the language of the 11th section of the Statute 14th Geo. III. chap. 83, with regard to the advantage to be anticipated from the substitution of tenure in soccage for feudal services. I may remark that Parliament could scarcely be otherwise than sincerely convinced of the benefit of that measure since the maxims on which may be proceeded, are in accordance with the conclusions of almost all theoretical writers and practical statesmen. I am not indeed anxious to know that these views were just, but I think it not immaterial to have pointed out that the errors, if any, which they involve, can be attributed only to a sincere zeal for the good of those whom the enactments in question more immediately affect.

I fully admit, however, that this is a subject of local and internal policy, upon which far greater weight is due to the deliberate judgment of enlightened men in the Province than to any external authority whatever. Your Lordship will announce to the Council and Assembly, His Majesty's entire disposition to concur with them in any measure which they may think best adapted for ensuring a calm and comprehensive survey of these subjects in all their bearings. It will then remain with the two Houses to provide such laws as may be necessary to render the Provincial code more uniform, and better adapted to the actual condition of Society in Lower Canada. To any laws prepared for that purpose and calculated to advance it, His Majesty's assent will be given with the utmost satisfaction. It is possible that a work of this nature would be best executed by Commissioners to be specially designated for the purpose. Should such be your Lordship's opinion, you will suggest that mode of proceedings to both Houses of the Provincial Legisla-

ture who, I am convinced, would willingly incur whatever expense may be inseparable from such an undertaking, unless they should themselves be able to originate any plan of enquiry and proceedings at once equally effective and economical.

Eighthly.—The Administration of Justice is said to have become inefficient and unnecessarily expensive.

As the Provincial Tribunals derive their present constitution from local Statutes, and not from any exercise of His Majesty's prerogative, it is not within the power of the King to improve the mode of administering the Law, or to diminish the cost of litigation. Your Lordship will, however, assure the House of Assembly that His Majesty is not only ready but desirous to co-operate with them in any improvements of the Judicial system which the wisdom and experience of the two Houses may suggest. Your Lordship will immediately assent to any Bills which may be passed for that purpose, excepting in the highly improbable event of their being found open to some apparently conclusive objection. Even in that case, however, you will reserve any Bills for improving the administration of the Law for the signification of His Majesty's pleasure, instead of immediately rejecting them.

Ninthly.—The Address then states that the confusion and uncertainty of which the House complains has been greatly increased by enactments affecting real property in the Colony, made in the Parliament of the United Kingdom since the establishment of the Provincial Legislature, without those interested having even had an opportunity of being heard; and particularly by a recent decision on one of the said enactments in the Provincial Court of Appeals.

His Majesty's Government can have no controversy with the House of Assembly upon the subject; the House cannot state in stronger terms than they are disposed to acknowledge the fitness of leaving to the Legislature of Lower Canada exclusively, the enactment of every law which may be required respecting real property within that Province.

It cannot be denied, that at a former period a different opinion was entertained by the British Government; and that the Statute Book of this Kingdom contains various regulations on the subject of Lands in Lower Canada, which might perhaps have been more conveniently enacted in the Province itself. I apprehend, however, that this interference of Parliament was never invoked except in the pressure of some supposed necessity; and that there never was a period in which such Acts were introduced by the Ministers of the Crown without reluctance.

To a certain extent the Statute 1, Will. 4, cap. which was passed at the last Session of Parliament, has anticipated the complaint to which I am now referring, and has prevented its recurrence by authorizing the local Legislature to regulate whatever relates to the incidents of soccage tenure in the Province, without reference to any real or supposed repugnancy of any such Regulation to the Law of England. If there is any part of the British Statute Law bearing upon this topic to which the Council and Assembly shall object, His Majesty's Government will be prepared to recommend to Parliament that it should be repealed.

Tenthly.—It is stated that several of the Judges of the Court in the Province have long been engaged in, and have even taken a public part in, the political affairs and differences of the Province, at the same time holding offices at pleasure, and situations incompatible with the due discharge of their judicial functions.

Under this head again, it is very gratifying to the Ministers of the Crown to find that they had in a great measure obviated by anticipation the complaint of the House of Assembly. In the despatch which I addressed to your Lordship on the 8th February, No. 22, every arrangement was made which could either be suggested or carried into effect by His Majesty's authority, for removing the Judges of the Province from all connection with its political affairs, and for rendering them independent, at once of the authority of the Crown, and the control of the other branches of the Legislature, thus placing them exactly in the same position as that of the Judges of the Supreme Courts at Westminster.

The Judges themselves have, it appears, with laudable promptitude, concurred in giving effect to these recommendations, by discontinuing their attendance at the Executive Council. Nothing therefore, in fact, remains for terminating all discussion upon this subject, but that the House of Assembly should make such a permanent provision for the Judges; as, without exceeding a just remuneration, may be adequate to their independent maintenance in the rank of life which belongs to the dignity of their station.

I am not aware that any Judge in Lower Canada holds any office excepting that of Executive Councillor, during the pleasure of the Crown, or which is in any respect incompatible with the due discharge of his official functions. I have the goodness immediately to report to me if any such case exists, your Lordship will all the circumstances by which it may be attended, in order that the necessary instructions on the subject may be given. In the mean time I may state, without reserve, that no Judge can be permitted to retain any office corresponding with the description thus given by the House of Assembly, in combination with that independent position on the bench to which I have referred.

Eleventhly.—The address proceeds to state, that during a long series of years, executive and judicial offices have been bestowed almost exclusively upon one class of subjects in the Province, and especially upon those the least connected by property or otherwise with its permanent inhabitants, or who have shown themselves the most averse to the rights, liberties and interests of the people. It is added that

several of these persons avail themselves of the means afforded by their situation, to prevent the constitutional and harmonious co-operation of the Government and the House of Assembly, and to excite ill feeling and discord between them while they are remote in their different situations to forward the public business.

I quote thus largely the language of the address because I am desirous to meet every part of it in the most direct manner, as well as, in the most conciliatory spirit. It is not from any want of that spirit that I recommend you to suggest for the consideration of the House of Assembly, how far it is possible that His Majesty should clearly understand or effectually redress a grievance which is brought under his notice, in terms thus indefinite. If any public officers can be named, who are guilty of such an abuse of their powers, and of such remissness in their duties as are implied in the preceding quotation, His Majesty would not be slow to vindicate the public interest, by removing any such persons from service.

—If it can be shown that the patronage of the crown has been exercised upon any narrow and exclusive maxims, they cannot be too entirely disavowed and abandoned, especially if it be true, that the permanent inhabitants of the colony do not enjoy a full participation in all public employments. The House of Assembly may be assured, that His Majesty can have no desire that any such invidious distinctions should be systematically maintained. Beyond this general statement it is not in my power to advance. I am entirely ignorant of the specific cases to which the general expressions of the Assembly point. I can only state, that since His Majesty was pleased to entrust to myself the seals of the department, no opportunity has occurred for exercising the patronage of the crown in Lower Canada, to which it is possible that the Assembly can refer; nor have my enquiries brought to light any particular case of a more remote date to which their language would appear to be applicable.

Twelfthly.—The next subject of complaint developed in the following words:—“that there exists no sufficient responsibility on the part of the persons holding these situations, nor any adequate accountability among those of them entrusted with public money, the consequence of which has been the misapplication of large sums of public money, the loss of large sums of public money, and of the money of individuals, by defaulters, with whom deposits were made under legal authority, hitherto without reimbursement or redress having been obtained, notwithstanding the humble representations of your petitioners.”

It would be impossible without a violation of truth, to deny, that at a period not very remote, heavy losses were sustained both by the public and by individuals from the want of proper securities having been taken by public accountants, and still more from the want of a proper system of passing and auditing these accounts. I find, however, that in his despatch of the 29th September 1828, Sir George Murray adverted to this subject in terms to which I find it difficult to make any useful addition. His words are as follows:—“The complaints which have reached this office respecting the adequate security given by the Receiver General and the Sheriffs for the due application of public money in their hands, have not escaped the very serious attention of the Ministers of the crown. The most effectual security against abuses of this nature would be to prevent the accumulation of balances in the hands of public accountants, by obliging them to exhibit their accounts to some competent authority at short intervals, and immediately to pay over the ascertained balance. The proof of having punctually performed this duty should be made the indispensable condition of receiving their salaries, and of their continuance in office.”

In the colony of New South Wales a regulation of this nature has been established under His Majesty's instructions to the Governor of that settlement, and it has been productive of great public convenience. If a similar practice were introduced in Lower Canada for the regulation of the office of Receiver General, and for that of Sheriff, the only apparent difficulty would be to find a safe place of deposit for their balances.—I am however authorized to state, that the Lords Commissioners of His Majesty's Treasury will hold themselves responsible to the Province, for any sum which the Receiver General or Sheriffs may pay over to the Commissary General. Your Excellency therefore will propose to the Legislative Council and Assembly the enactment of a law binding these officers to render account of the receipts at short intervals, and to pay over the balances in their hands to the Commissary General, upon condition that that officer shall be bound on demand to deliver bills on His Majesty's Treasury for the amount of his receipts. I trust that in this proposal the Legislature will find a proof of the earnest desire of His Majesty's Government to provide as far as may be practicable, an effectual remedy for every case of real grievance.

If the preceding instructions have proved inadequate to the redress of the inconvenience to which they refer, I can assure your Lordship of the cordial concurrence of His Majesty's Government in any more effective measures which may be recommended for the purpose either by yourself, or by either of the Houses of the Provincial Legislature.

The losses which the Province sustained by the default of the late Mr. Caldwell is a subject which His Majesty's Government contemplate with the deepest regret—a feeling enhanced by the painful conviction of their inability to afford to the Provincial Revenue any adequate compensation for so serious an injury. What is in their power they have gladly done by the instruction conveyed to your Lordship in the early part of this despatch, to place at the disposal of the Legislature for general purposes the sum of £7,154 15s. 4d. recovered from Mr. Caldwell's property. The Assembly will, I trust, accept this as a proof of the earnest desire of His Majesty's Government to consult to the utmost of their ability the pecuniary interests of the Province.

Thirteenthly.—The address proceeds to state “the evils of this state of things have been greatly aggravated by enactments made in the Parliament of the United Kingdom without even the knowledge of the people of this colony, which enactments have rendered temporary duties imposed by the Provincial Legislature permanent, leaving in the hands of public officers over whom the Assembly has no effectual controul, large sums of money arising within

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