

EUROPE.

ENGLAND.

HOUSE OF COMMONS.

TUESDAY, 15TH APRIL.

GOVERNMENT OF CANADA.

(Continued from our last.)

Mr. Stanley offered his thanks to the hon. and learned gentleman who had just sat down, first for the advice he had tendered him, and in the next place for having by the present motion afforded him an opportunity to explain and bring under the consideration of the House not only the constitution, but also the present state of the Province of Lower Canada. [Hear.] He confessed, though he had listened with great attention to the speech of the hon. and learned gentleman, it was with no small difficulty that he had followed the hon. and learned gentleman through the complicated dates, terms, facts, and circumstances, which almost rendered the hon. and learned gentleman's statement unintelligible to the persons acquainted with the subject matter sought to be inquired into; but he (Mr. Stanley) begged the House to observe, that the hon. and learned gentleman, on a general principle (which, however, he did not avow), called upon the Legislature of this country to enter into the consideration of the existing constitution of two colonial provinces, while the whole of the hon. and learned gentleman's facts and allegations referred to one single province—[Hear, hear]—nay, more, the hon. and learned gentleman had entirely omitted to inform the House that in the other province the Governor, the Executive Council, and the Legislative Council, were united in bonds of most perfect good feeling and unanimity, notwithstanding the strenuous efforts which had been essayed to disturb the harmony which had prevailed for a long period amongst these three branches of the local government of Upper Canada. [Hear, hear.] It would be his (Mr. Stanley's) duty to endeavour to supply this omission on the part of the hon. and learned gentleman. He would first state, that not long since a gentleman of the name of Mackenzie came over to this country from Upper Canada to complain to his Majesty's Government of certain grievances alleged by him to exist in that province. That complaint had been inquired into with the deepest anxiety by his (Mr. Stanley's) noble predecessor in the office he had now the honour to fill, with a view to equal and impartial justice. His noble friend had called upon the Legislative Assembly of Upper Canada to take the best mode to meet the alleged grievances, and what was the answer of the House of Assembly—a body whose independence and freedom of action had not been disputed by the hon. and learned gentleman. In answer to this communication the House of Assembly state.—[Here the Rt. Hon. Gentleman read a large part of the address, expressing loyalty and denying all Mr. Mackenzie's assertions of grievance and oppression in the colonies.]—This was the mode in which the House of Assembly spoke of the constitution which the Honourable and Learned Gentlemen sought to vilify and abuse—such was the language of a body, freely elected by the people of Upper Canada, where the right of election in counties was a 40s. franchise, and in towns, in the owners of houses of the annual value of £5, or the occupiers of houses of the annual value of £10. In the year 1823, a select committee of the House of Commons had been appointed to inquire into the state of the government of Upper Canada. That committee had, however, laid down as a principle, that where a colonial province had a local legislative Assembly of its own, the Parliament of this country ought only to interfere in cases of great emergency. He (Mr. Stanley), most cheerfully embraced that principle and opinion—[hear, hear]—and he owned he was not a little surprised that the Honourable and Learned Gentleman opposite, should seek to interfere with the constitution of a country possessing free institutions, and suffering less from taxation than any other part of the globe—a country whose people had already declared their confidence and satisfaction in the established government, and the existing state of things, and who could, in the course of the present year, at the elections which must ensue, make different returns to the House of Assembly, in case they were dissatisfied with the course pursued by their present representatives. He must admit that the case of Lower Canada was, however, very widely different. [Hear, hear.] In the one province, the constitution was not made matter of complaint, but in the other province it was so by parties to whose allegations he should presently address himself. The first point of complaint had been as to the present constitution of the Executive Council, and the Legislative Council; the former of which, it should be known, resembled in its character and functions, the Privy Council in this country, assisting the Governor with their advice, and superintending the Treasury accounts of the Colony. He courted, nay, more, he demanded inquiry, in order that the allegations which had been put forth might either be substantiated or refuted, and he pledged himself that he would show to the committee and the House, that the majority of these allegations were greatly overcharged. It had been urged that the Legislative and Executive Council were combined. What was, however, the fact? In Upper Canada, of the Executive Council, consisting of thirty-two members, only six were members of the Legislative Council; and in Lower Canada, the Executive Council, consisted of thirty-seven members, of whom three

only had seats in the Legislative Assembly. [Hear.] Before calling the attention of the House to the report of the select committee of 1823, he must be permitted to read some remarkable pieces of evidence as to the best remedy for grievances set forth in a petition, signed by 87,000 French Canadians, which had been entrusted to three delegates, Mr. Neilson, Mr. Cuvillier, and Mr. Viger, for presentation to the Imperial Legislature. The gentlemen were themselves members of the local legislative assembly, and had been examined before the committee. Mr. Neilson, in the course of his examination, was asked if he had ever turned in his mind any plan by which he conceived the Legislative Council might be better composed in Lower Canada? His reply was as follows:—"There are two modes in which the composition of the Legislative Council might be bettered: the one, which I believe the people in Lower Canada have in view, is by the exercise of the prerogative, appointing men who are independent of the Executive, and in fact who are able to live by their own means. That has appeared to us to be the most consistent with the constitution under which we live." The other mode would be to make the Legislative Council elective by electors of a higher qualification. Mr. Neilson also recommended the exclusion of the Judges from the Legislative Council. The evidence of Mr. Cuvillier was even still stronger. This witness stated that the people complained that the majority of the members of the Legislative Council were persons holding places of profit during pleasure, and in consequence were not considered independent of the Crown; and on being asked "if he considered a greater security would be effected by making the Legislative Council elective, the members to hold their seats for life," Mr. Cuvillier replied—"With regard to that, I would not wish the Legislative Council to be elective, as I think it would make that body dependent upon the people, and I should like to see them independent of the Crown." [Hear.] Such then, was the evidence, and on that evidence the report of the Committee recommended that a more independent character should be given to this body. He was prepared to show that the letter and spirit of that recommendation had been complied with in the most entire good faith. The Judges, with the exception of the Chief Justice, whose presence was necessary for certain duties in the Legislative Council, had been excluded, and in other respects the spirit of the recommendation had been carried into effect. At the time the committee sat in 1823, the members of the Legislative Council of Lower Canada, were 27 in number, of whom 19 held offices under the Crown; and in the year 1832, the number of members was increased to 35, and of these only 7 were connected with the Crown, leaving 27 members, exclusive of the Chief Justice, entirely independent of the Government. [Hear, hear.] Now again, with regard to the national origin of the members of the Legislative Council last year, as compared with the year 1823. In the latter year there were three Anglo-Americans of the Council; in the year 1833 the number had increased to five. Of Irish origin there were two in the Council in 1823; in 1833 only one. Of Scotch, nine in 1823; and eight in 1833, while of French Canadians (the party from which complaints had originated), though only six persons of that race were members of the Legislative Council in 1823, there were last year no less than eleven in that body. [Hear.] In any subsequent addition to the numbers of the Legislative Council, he could assure the House that the same spirit would be manifested to preserve the independence of that body as that from which the result he had already named had occurred—namely, that in 1823, out of 27 members, 13 were dependent on the Crown, while now only 7 out of 37 were at all under the control of the local Government. [Hear, hear.] These facts manifested to the House, that the Governor had faithfully followed up the opinions expressed by the committee of 1823. The Government of this country had been most anxious to maintain harmony between the Crown, and the House of Assembly, but it had unhappily devolved upon him, in the painful exercise of his duty, to endeavour to put down the monstrous pretensions to which the House of Assembly claimed the uncontrolled direction of the revenues in the province. [Hear, hear.]—and he (Mr. Stanley) admitted the general principle which that claim involved. But he was borne out by the opinion of the House of Commons in 1823; and at any rate he had reason to justify him in thinking that the executive officers and the judges ought to be rendered independent of the caprices of a popular assembly. In the year 1773, a declaratory act was passed by the Legislature, by which it was declared that no duties should be levied in the province without the consent of the local Legislature. In 1791 a division—a most unfortunate division, in his opinion—was made of that portion of the dominions of the British Crown in the provinces of Upper and Lower Canada, the upper province being peopled by English and American settlers, while the lower was almost entirely occupied by the descendants of the French colonists. A separate Government, and of course a legislative Council, was granted to both provinces; while, at the same time, the free enjoyment of the laws under which they had up to that time lived was guaranteed to all, although the basis of the laws which the French so much regarded was the feudal tenure in its most unmitigated and worst form. It was declared that they should have the untrammelled use of their own language, their

own religion, their own laws; and on the part of the English Government that engagement had been zealously, sedulously, anxiously adhered to. [Hear.] At this period the amount of the revenue coming into the Crown from the casual and territorial duties rendered it unnecessary to apply to the House of Assembly for any sums in aid of the local expenditure; but after the lapse of some years such an application was found to be imperatively called for. The House of Assembly at first complied with the requisition, and granted an additional sum of money, without any stipulations as to its disposal, and after some time they claimed—and he thought the claim was a fair one—they claimed a superintendence over the Revenues collected within the Province. Things went on in this state for some time, concessions being made sometimes on one side, and sometimes on the other, till at last the Governor of the Province authorized the receiver to take any sum out of the chest of the Province on an order signed by him, without waiting for the sanction of the House of Assembly for its approbation. [Hear, hear.] This was a step which should never meet with his approbation, and it was at this proceeding that the censure of the select committee of the House of Commons in 1823 was levelled. But to come to the consequences which brought on the present collision. The Legislature broke up at an early period, leaving the quarantine establishments in a state of great distress, when the cholera was raging with unexampled fury, and famine was partially ravaging the country. Under these circumstances the Governor, chiefly from his own resources, had advanced £7,000 to provide for the pressing wants which such a calamity occasioned; and when he applied the next session, in full confidence that the House of Assembly would reimburse for what he had thus humanely advanced, he was met by a taunt against the misappropriation of the money. [Hear, hear.] His Noble Friend had proposed to the House to accept of a certain sum for the salaries of the Judges, and £4,500 for the Governor yearly; nay, he had even gone further, and had offered to reduce the whole amount to £35,000, provided the House would consent to make a permanent appropriation. In 1831, the council of the upper province expressed in an address their thanks to the Crown for having consented to make the judges independent. The Governor of the province of Lower Canada brought in a bill to the same effect, although he was charged with rashness in doing so, placing an unjust reliance on the candour and honour of the local Legislature to make an adequate provision for the payment of salaries. But had they done so? No. They had, indeed, passed a bill professing to make them independent, and they wisely determined that they should hold their offices for life; but no stated sum was mentioned as the salary they should receive, nor was any provision made respecting the funds on which their salaries were to be charged, except by pointing obliquely at the revenues over which they had no control. Now, this was not the way to effect the object for which they effected to be zealous. They never intended to do any thing, and their bill was rejected at once. The Governor had informed them that his Majesty would not again apply to the House of Assembly but would provide funds from other sources. The spirit, he was sorry to say, of faction, which prevailed in that province, could be well collected from the case of M. Mondelet. It so happened that the district of Gaspé, one of the few places in Lower Canada where English influence rather predominated, had been some time ago represented by a gentleman of the name of Christie, who had been indiscreet enough to dispraise by some publication, the party paramount in the house of Assembly, and on his appearing to take his seat there, it was determined that he was not a fit person to sit with them. He was re-elected; and, five or six times in succession, no longer entering on any discussion on the point of his disqualification, they expelled him after each re-election. [Hear, hear.] Now, in this instance, whatever might be the private opinion of individuals, so strongly did the Government feel that they could not interfere with the privileges of the House of Assembly, that not the least hesitation was manifested, at issuing the respective writs which the Assembly in this instance ordered. With regard to M. Mondelet, he had accepted the honorary appointment of a councillor, for which he received no emolument whatever. Now, there was no law subsisting in the colony which required the vacating a seat in the Legislature on accepting an appointment. They, however, determined that all persons who for the future should accept offices of emolument under the Crown should vacate their seats in the Legislature; they sent this bill to the other branch, and passed a resolution that even before it received the royal assent, it should have the force of law in the colony. [Hear, hear.] Now M. Mondelet did not come within the provisions of this enactment, either in the letter or the spirit, yet the Speaker was ordered to issue his writ for a new election in consequence of M. Mondelet's having accepted a place of profit under the Crown. He hardly knew how to follow the hon. Gentleman through the many points of speech presented, but he would touch on what the hon. Member was pleased to call the massacre at Montreal. Now this formidable phrase meant, in fact, nothing more than an election disturbance, in which two or three persons were unfortunately killed. The grand jury, whose functions had been but recently exercised, and who were composed after the model of the grand juries in England, ignored the bill pre-

ferred against the individuals who were charged with the murder, and an address signed by 7,700 persons, out of a population of about 21,000 inhabitants, expressed the high sense which those who had signed the address entertained of the temper with which these election proceedings were conducted. The House of Assembly instituted an inquiry into the circumstances, they summoned witnesses, they examined papers, and finding they could at that time make nothing of it, they adjourned the inquiry to the next Session. It was then resumed and made the pretext for postponing the writ for this, the most important city in Lower Canada. He (Mr. Stanley) believed that in doing this the Assembly had only in view the exclusion of British influence. [Hear, hear.] There was no person more studiously desirous than himself to preserve the engagements which this country had entered into; but at the same time they had a duty to perform in promoting the influx of British Capital and British settlers in this province. [Hear.] This was a struggle which had long been going on between the British and French, the latter being apprehensive of danger to their feudal tenures. That at some future period the two provinces would be reunited he had not the least doubt, but at the present time he felt an unwillingness to recommend to Parliament this step, in order to overpower in this manner the members of the refractory Legislature of Lower Canada. Their great grievance was the Canada Tenures Act. The allotments of Land were granted in free and common socage. Difficulties had arisen as to the interpretation of passages in the act of Parliament of 1791, which it was found could not be dealt with by the Canada authorities; and now Parliament, as it was justified to do, stepped in to interpret its own Act. The Crown, which was the whole place of seigneur paramount of the choice of vices, offered all the seigneurs the choice of holding free and common socage, instead of by feudal tenure, and this without levying any fine, provided only they would deal in like manner with all persons who held under them. It was idle, he maintained, that it should be supposed that the interests of the French inhabitants could be affected by such a course of proceeding. The French seigneurs were at present in great part a wilderness. On the contrary, the Canada tenures bill was calculated most materially to benefit the province and the great mass of the inhabitants, who were French Canadians. He would now address himself to the cases in which complaints respecting the conduct of the Government had been made, and he challenged a rigorous investigation into the facts and circumstances of each case. The first was the seminary of Montreal, the rights of which he begged to say were held in considerable doubt. This seminary was originally attached to that of St. Sulpice at Paris. It now exercised the functions and enjoyed the privileges of seigneur of Montreal, amongst which was the power of imposing taxes and duties. He believed he was correct in stating that a tax amounting to one fifth on every mutation of property was levied there. The law officers of the Crown had given an opinion against the fact of those rights being vested in the seminary. An adjustment of the claims of the seminary had been proposed, and the Government proposed to grant to the seminary the whole amount of its annual revenues, taking an average of the receipts for the last ten years; and, moreover, they further pledged themselves that if any surplus arose from the revenues, upon the payment of this annual allowance, they would place that surplus in the hands of the House of Assembly for purposes of education. Next, as to the complaint that the Legislative Council was not made elective, he contended that in a country where the mass of the population were French Canadians, while almost all the property, with the exception of the land, was in the hands of British inhabitants, and when the House of Assembly, from jealousy of their own laws and privileges, showed an aversion to the settlement of British capital in the provinces, it they were to make the Legislative Council elective, it could have no other effect than that of only abrogating the power of the Government and of the Executive, but moreover the rights of British subjects, which he for one was not prepared to surrender to any means of intimidation which any body of men could employ. [Cheers.] The last charge was, that they had not admitted a fair proportion of French Canadians to public offices. It was alleged that out of 214 public functionaries, only 47 were French Canadians. How were the facts of the case? Of the 214, 125 were of British origin, and born in these countries, and 81 were born in the Canadas, 31 were of British parentage, and 50 of French Canadian parentage. This was the fair way to take the proportion of the French Canadians employed by Government, not as compared with those sent from the mother Country and with the British-born Canadians, but simply and solely with the latter. It was true that of nine judges three only were French Canadians; but when the hon. Member said that the judges like the Legislative Council, were not connected with the colony, he said that which was altogether incorrect. [Hear, hear.] They were all gentlemen from the part of Canada who had raised themselves to the bench by successful professional exertion. The Right Hon. Gentleman proceeded to say that he was satisfied to rest the defence of the Government—not of himself alone but of his predecessor—upon the statements he had just made. He was desirous of having them subjected to the most rigorous investigation, limiting it however strictly to the subjects which had been made the foundation of charges against them. He would freely give any dispatch he had received, and he hoped the documents he would so cheerfully furnish would not alone be examined, but re-examined and cross-examined. The Government was on its trial, and he hoped it would have a full, fair, and impartial one. The next question to which he had to call the attention of the House was a financial one. He had to state that he should feel himself compelled to come before them in consequence of the violation of the implied pledge of the Legislative Assembly with his Noble Friend, when he brought in his bill, in 1831, which conferred on the Assembly the power of voting its own. It was then understood that the Assembly would provide permanent establishments in the Colony. That they had failed to do, and as it was not to be tolerated that the judges should be left dependent upon the annual grants of a popular assembly, he should feel it his duty to propose a bill for suspending the act in question, until the Legislative Assembly had redeemed their pledge, and made a fitting permanent provision for the judicial establishment. [Hear, hear.] He trusted, in asking this, he was not going too far, when he was at the same time ready to make the stipulation, that after the

condition had been complied with, the whole of the revenues should be given over to the authority of the Provincial Assembly. He would not dwell upon the topics insisted upon, or the expressions used in the recent resolutions of the Legislative Assembly. Great praise was conferred upon two Hon. Members of that House—the Hon. Member for Dublin, and the Hon. Member for Middlesex—praise which he doubted not was most sweet to their ears; they were described as the champions of the rights and liberties of their respective counties, even in the worst days of Tory Government, and applauded as sharing the liberal and enlightened feelings of the Legislative Assembly of Lower Canada. After professing their attachment to Great Britain, the Assembly proceeded to talk about the institutions of America, and to indulge in expressions of such extreme opinions, conveyed in such objectionable language that he would not trust himself with any comment upon them, lest perchance he might lose his temper. In conclusion, then, he would move an amendment upon the motion of the hon. Member. The amendment was for the appointment of a select committee to inquire and report whether the grievances complained of in 1823 by certain inhabitants of Lower Canada had been redressed and also whether the recommendation of a committee of that House, to whom the question of these grievances was referred, had been complied with on the part of the Government; also to inquire into other grievances now set forth in the resolutions of the House of Assembly in Lower Canada, and report thereupon to the House.

Mr. O'Connell said after the amendment proposed by the right hon. Gentleman, he would recommend his hon. friend to withdraw his motion and leave the whole responsibility of the appointment of the Committee to the Government. The conclusion of the right hon. gentleman's speech was satisfactory, which was more than could be said for the first part of it. As the question, however, was to be submitted to a Committee, he would not trespass now on the time of the House. He must protest, however, against the powers granted to the Legislative Council; against the unequal distribution of Government places; and the little attention paid to the just claims of the Catholic Clergy. It was folly to suppose that any foreign government could so effectually protect the interests of the people as could the people themselves. It was, he thought, essential to the well being of the people that they should be left to manage their own affairs.

Mr. Hume would not perhaps have thought it necessary to trespass upon the indulgence of the House had he not been particularly introduced to their attention by the right hon. gentleman who had addressed them. The manner too of that introduction left him no alternative, though he should be brief in his observations. To the sneering remark of the right hon. Secretary, he should only observe that he had rather be recognized as the friend of a distant—and it might be of an oppressed people—than the tyrant of any portion of his Majesty's subjects—[hear, hear.] He should leave the right hon. gentleman in the enjoyment of any fancied triumph, with the simple assurance that he should not find him (Mr. Hume) like many of his friends—the supporter of Tory Government under Whig Administration—[hear, hear.] It was notorious that the majority in Upper Canada was obtained by bribery and corruption—by the placing in the House Excise officers and persons of that class. He was surprised that the right hon. gentleman should have attempted to mislead hon. members as he had done. Was it not known that a dissolution of the House was prayed for by the inhabitants of Upper Canada, in order that an election might afford them an opportunity of giving unequivocal expression to their feelings? What was the conduct of the right hon. Secretary, when appointed to his present situation? The Attorney and Solicitor General had been removed by the right hon. gentleman's predecessor, and, as if to show his dissent from anything like conciliating policy, they were restored, and had even additional honor conferred upon them by the present right hon. Secretary—[hear, hear.] To him (Mr. Hume) it was a matter of deep regret that the affairs of the colonies should be managed as they were at present. The resolutions agreed to by the colonists declared that the "Legislature had but little sympathy with the people;" and this was the statement of persons who had returned thanks to the Earl of Ripon, while they had censured the present right hon. Secretary. He (Mr. Hume) would object to the appointment of a Committee unless it was composed of persons in no way concerned with the Government. He was anxious that a fair and impartial Committee should be appointed, for he could anticipate much benefit from their inquiries. But he thought it most useless to appoint a Committee unless it were composed of men unbiassed by any particular opinion—[hear.] The hon. member concluded by expressing his hearty concurrence in the motion.

Lord Howick said it was a mistake to suppose that there was any intention upon the part of the Government to interfere with the colonies in the management of their revenue. A free and unrestrained control over the management of the public purse was, perhaps, one of the first principles of a Government, and with this there was no intention of interfering. The question simply was whether or not a fixed salary was to be appointed for Judges, in order that they should be rendered independent. In reply to the observation of the hon. member for Dublin, that the Catholic Clergy were prevented from taking ground for the erection of houses of worship, he (Lord Howick) begged to reply that the Catholic Clergy in the Canadas had been treated with the utmost liberality since the conquest, and even to the present day continued to be so treated. With respect to an observation which had fallen from the hon. mem-

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