SIR CHARLES METCALFE DEFENDED
AGAINST THE ATTACKS OF HIS LATE COUNSELLORS—BY
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Having proved, I trust, to the satisfaction of the candid reader, that the proceedings of the late Counsellors, in their resignation, and against Sir Charles Metcalfe, were informal in every respect an unconstitutional in several respects; I now proceed to shew, *that those gentlemen have failed to establish the allegations which they have made against his Excellency.*

When I use the term "late Counsellors," I do not mean to include each of them individually. Several of them are known to have been reluctantly acquiescing parties in the proceedings of the leaders; the circumstances in which they were placed were perfectly novel; they had not examined British precedents; the whole complex affair transpired in less than three days, so that they had not time for cool minute, thorough, independent examination; they felt themselves bound in party hands; they submitted themselves into the hands of their capitals, since the prorogation they have acted with the silent dignity of retired ministers of the Crown; they have neither been party organizers, nor political disorganizers; some of them I believe, have viewed the steps into which a temporary pressure led them with concern, if not with misgiving and regret, and would be happy of an honorable and safe escape from their present dilemma. To such parties I do not refer; their assent was general; and their conduct has since been unexceptionable. I refer especially to those Counsellors who made allegations against the Governor-General in the Legislature; who have repeated them with sundry additions and exaggerations at public meetings—To Messrs. Baldwin, Sullivan, and Hincks.

It may be also remarked that the retirement of the late Counsellors was expected to be of short duration—some of them intimated that they thought it would be only a few days. Had such an expectation been realised, a feat would have been performed worthy of the days of chivalry—a resignation—a restoration—a victory over the Crown itself—and all this in less time than the 16 days required by Cicinatus to subdue the Æquid Volsci and re-establish the safety of Rome. However, the former only has as yet been accomplished.

The first anamoly that strikes the mind of an attentive observer of their proceedings is, the position in which they place themselves before the Legislature and the country. Their *constitutional* position is that of *defendants*; their *real* position is that of *plaintiffs*. They come before the jury of the Canadian public to answer for *their own* views and conduct; they answer, by arraigning the views and conduct of the *Governor-General*.—Now, a Canadian jury cannot constitutionally sit in judgement on the views and conduct of the Governor-General; for the Resolutions of September 1841, declare, "that the head of the Executive Government of the Province, being within the limits of his government the representative of the Sovereign *is responsible to the Imperial authority alone.*" No man can be justly or constitutionally arraigned before a tribunal to which he is not amenable. Cromwell had a *shadow* of constitutional pretension for arraigning Charles the first before even his Rump Parliament; but the late Counsellors have the Constitutional Resolutions of 1841, positively *against* their arraigning the views and conduct of the Governor-General before any other tribunal than that of "the Imperial authority alone." Whatever therefore may be the intentions (with which I have nothing to do,) their proceeding involves a *direct* blow against a fundamental principal of the Resolutions of 1841, and an *indirect* blow against the colonial connection of Canada with Great Britain. If the Governor-General can be arraigned before the Canadian Legislature for his views and conduct, he cannot be "responsible to the Imperial authority" *at all*, for "no man can serve two masters." The very arraignment, therefore, of the views and conduct of the Governor-General before the Colonial Legislature, *assumes* independance of the mother country. Nor is that all, It assumes the power of the Assembly over the Monarchy, and involves the destruction of Monarchical government itself. For, as De Lolme says—in the passage quoted in the preceding number—"the King himself cannot be arraigned before judges; because if there were any that could pass sentence upon him, it would be *they* and not *he* who *must finally possess the Executive power.*" The arraignment of the views and conduct of the Governor-General before the House of Assembly *assumes* that they are his "judges;" or, in the words of De Lolme, that "*they*, and not *he*, possess the Executive power." If, therefore, the late Counsellors did not desire to be supreme themselves, and make the Governor subordinate, their proceeding involves his subordination to the House of Assembly.

Such are the inferences which flow irresistably from their anamalous proceeding. Such is the first anamoly it presents. Another is the nature of the defence. It consists, as the House of Assembly seems to have understood from the resolution introduced by Mr. Price, which was adopted in their behalf, of a charge against the Governor-General that he had denied "their *right to be consulted* on what the House unhesitatingly avows to be the prerogative of the Crown—appointments to office." They place themselves before the House and the country, not upon their policy of government, (which Sir Charles declares to have been the point of difference,) but upon "their right to be consulted," which His Excellency denies to have been the question at issue, and of which he says in his reply to them, that he "is astonished at finding that the resignation is *now* ascribed to an alleged difference of opinion on the theory of Responsible Government." They keep out of sight of the House the new *policy* of Government which they had been urging upon the Governor General, and claim its vote in their behalf, by alledging that his Excellency had invaded its rights. A new mode, indeed, for a defendant to claim an acquittal and even approval of a jury, upon the ground of a general charge against the plaintiff, supported by the evidence of the defendant's own *assertion*. Who would not prefer the position of the defendant, to that of the plaintiff, according to this mode of proceeding?

But what appears more anamolous still, is the nature of the charges which they prefer against his Excellency. They are *general*. They contain no *specifications* which can be met. They throw upon his Excellency the onus of not only proving a negative, but of proving a *general* negative. Mr. Baldwin, in his "*explanation*," ascribes to the Governor General certain anti-Responsible Government *doctrines* and alleges against his Excellency certain anti-Responsible Government *acts* as proof that he held these doctrines: but Mr. Baldwin *specifies* no acts—not even the names of the parties to whom they refer. Assuming that his Excellency, instead of Mr. Baldwin was on his trial before the House of Assembly, and that Mr. Baldwin was a legitimate witness in his own case, and that his Excellency was permitted to come to the bar and answer for himself, how could he disprove the charges preferred against him, when the *specifications* included in those general charges, were not stated? If the reader were arraigned as an infidel and a robber—an infidel not in the doctrine of Responsible Government, but in that of the Divine Government, and a robber, and not of another's property, but what is more valuable, another's rights—the rights of many others; and suppose the only testimony against him was the assertion of his accuser; and suppose that nothing was stated either in the indictment or in the evidence as to the specific nature of his scepticism, or the time, place, or even parties in relation to which his robberies were alleged to have been committed; but that it was stated in general terms that he had committed roberies, and that on certain occasions he had expressed sceptical sentiments; how could the reader rebut such charges? How could he prove an *alibi*? How could he prove that the facts alleged as robberies, were legal transactions, and not wrongs against any man! All this he might do, were specifications on each count of the indictment stated. But according to the procedure supposed, he could no more save himself from condemnation, however innocent he might be, than the selected victim could escape the Inquisition. How then could the Governor General defend himself, or be defended, against the general charges alleged by Mr. Baldwin? He could only do as he has done, deny them in general terms, by declaring that he "subscribes entirely to the resolutions of 1841," and that he has never deviated from them.

And under such circumstances, how could the Court of Parliament decide against him? If a man can be arraigned and condemned on general charges, and on the evidence of his accuser's assertion, what man's character, or liberty, or even life, is safe? And is the high Court of Parliament to condemn the Governor General on an indictment which would not be entertained by any Magistrates' Quarter Sessions against the humblest individual in the land? The Resolution of the Assembly expressing "the deep regret felt by the House at the retirement of certain members of the Provincial Administration *on the question of their right to be consulted* on what the house unhesitatingly avows to be the prerogative of the Crown, appointments to office; and further, that their *advocacy of this principle* entitles them to the confidence of the House," involves most unequivocally, that his Excellency had invaded that "right" and denied this "principle," against his own most positive and solemn declaration—and repeated declarations—to the contrary.

Had Mr. Baldwin come down to the house with what I have heretofore shone he should have done, a "case of facts," and had any one or more of those facts involved the fact or facts on which the resolution of the House of Assembly was predicated, then upon that evidence—the mutually admitted statement of the differing parties—could the resolution have been fairly and justly adopted. But as it was, the house had before them nothing but the *assersion* of one of the differing parties against the assertion of the other; and for them to have decided in favour of the one or the other upon such evidence, or rather such absence of all evidence, was as unprecedented as it was unjust, and was such a decision as no inferior court in the land would have been disposed or dared to make.

It has been stated that one of the movers of the resolution in question, has said, that he saw the house wavering, and that he pressed it to a vote before the members had time to draw back. It is not surprising that a thorough "party man" a man who prefers party to justice—should pursue such a course, and exult in its success. Nor is it surprising that the house was "wavering" under such circumstances; it would have been surprising had it been otherwise. As the case was a new one, and as the members of the Assembly could not possibly have acquainted themselves with the minute of British Parliamentary practice in such cases, it is not surprising that they were led on by party to adopt such a course. But it will be surprising if, after a calm review of the whole affair, and a minute investigation of all the facts of the question they do not waver back to the position of doing justice between man and man—of doing to the Governor General as they would be done by in similar circumstances—of acting in harmony with the practice of British Responsible Government. It has been said, "to err is human, to forgive divine." those members of the Assembly who have in this case done what is "human," are not asked to do what is "divine." No crime has been committed; no forgiveness is sought or needed. But they are asked—and I have no doubt but a just and honest country will ultimately require it to be done—to retrace what is 'human' so far back to what is 'divine' as to do justice to an upright, a generous, and an unjustly implicated man.

Pope has said, for a man to acknowledge his error is only to confess that he is wiser to-day than he was yesterday. What is true of individuals is true of collections of individuals; and I am much mistaken, if the members of the house of Assembly—after the lapse of so many days—will not be wiser next session than they were the last. I am also inclined to believe that several, if not all, of the late Counsellors—after their unexpectedly long retirement from the cares and perplexities of office—will be found more judicious, more experienced, better qualified, and more disposed to appreciate and adhere to the British principles and practice of Responsible Government, than they were last session.

But there is another anomaly still in this proceeding—another *prima facie* evidence that the late Counsellors have failed to establish the allegations which they have made against the Governor General. It is the perplexity—the cuttle-fish muddiness—in which they have involved the whole affair. Who in Canada, for weeks after their resignation, could comprehend their real differences with the Governor General? and not a few are still unable to define them. The "Toronto Reform Association" has schooled its pupils tolerably well into the mystery—at least so far as ringing the changes on certain words and phrases, and vociferous denunciations, evince proficiency; but even with such a school of public instruction on the subject, many are unable to perceive anything more than confused and undefined images of East India nabobism and West India negroism—the staple eloquence of the Association. Now such obscurity—such confusion—is never witnessed in any question of defined and proved facts. The inference, therefore, is inevitable, that their facts were neither specific nor proved.

That such was the light in which they were viewed, not only by unexperienced Canadian minds, but by the most acute and experienced statesmen, is obvious from a recent letter written by the hon. Joseph Howe, of Nova Scotia, and published in several of the Canadian papers. Mr. Howe was reported to have said in one of his speeches in the Nova Scotia House of Assembly, that "the difficulties in Canada had arisen from a *bungling administration.*" Mr. Howe, in a letter addressed to Mr. Hincks, and dated Halifax, April 29, 1844, explains as follows: "The conflicting statements put forth by the Governor General and his ex-Counsellors, rendered it difficult for some time to judge what the real points at issue were—the facts of the case, upon which alone an opinion could be formed, not being admitted on both sides. It was in reference to this contrariety of statement that I said in answer to some speaker who sought to show that the Canadian and Nova Scotia cases were strictly analogous, that the matter had been so "bungled" in Canada, that it was difficult to say whether such an inference could be fairly drawn. This is all that was said or intended; and the observation was only meant to apply to the then involved state of the controversy, and used without any desire to charge blame upon either of the parties whose opposing statements rendered it difficult at the moment to form a correct decision, and most desirable to keep the simple fact upon which the retirements were based, free from any theoretical dispute about general principles which it did not necessarily involve."

Now, if the acute mind and practised eye of the father of Responsible Government in British North America, could only discover in the Canadian "case of facts," "conflicting statements"—"opposing statements."—a "matter so bungled"—"theoretical disputes about general principles," could even *he* have discovered any *proof* of the allegations against his Excellency? Yet upon this case of "conflicting statements, and a "matter so bungled," do the late Counsellors demand a verdict of the country against Sir Charles Metcalfe as an enemy of Responsible Government! Would the reader, as a juryman, convict a known pickpocket upon such "bungled" and "opposing statements?" much less the Representative of his Sovereign against his own declarations.

From the foregoing reasoning I infer, therefore, that not only is the proceeding of the late Counsellors anomalous—as I have heretofore shown it was unconstitutional—but that upon every principle and legal and equitable practice, they have failed to establish their allegations against Sir Charles Metcalfe.

So much for their charges in general. Let us now examine them in detail. This is rather difficult, as they are so "bungled" together. I will, however, attempt to separate two or three from the mass. The first appears to be—as stated by Mr. Baldwin in his explanatory speech—"that his Excellency entertained a widely different view of the position, duties and responsiblities of the Executive Council, from that under which they accepted office"—that is the view expressed in the Resolutions of September, 1841.

Such is the first charge. Let us now examine its import, and the principle assumed and involved in the mode of its presentation. Mr. Baldwin does not condescend to inform the high court of Parliament to *what extent* Sir Charles's "view" is different from that of the late Council: nor what meaning he attaches to the *relative* terms "widely different."—Days have been when the different modes of cutting men's hair were held to indicate religious views as "widely different" as orthodoxy and heresy. And who is assured that Mr. Baldwin's "view" of more than one question is not so squared and nicely adjusted that a hair's-breadth deviation from it is "widely different"—so "widely different" as to prevent co-operation at all? There are as many ideas attached to the terms "widely different" as there are different intellectual constitutions. Some religionists now-a-days regard a difference in the form of ecclesiastical polity to involve a "view" and a fact as "widely different" as that which exists between *a* church and *no* church; and who is certain that Mr. Baldwin does not hold that the least deviation from his opinion constitutes the "wide difference" between Responsible Government and no Responsible Government? Then again, Mr. Baldwin does not inform the court *in what respects* Sir Charles is heretical in his view of the "position, duties and responsibilities