

ADDRESS
TO
His Excellency Sir Francis Bond Head,
LIEUTENANT GOVERNOR OF UPPER CANADA :
FOR COPIES OF DESPATCHES
FROM HIS MAJESTY'S GOVERNMENT,
ON THE SUBJECT OF THE
Independence of the Judges,
AND OF THE
CESSION OF THE REVENUE
UNDER 14 GEO. III.
TO THE
LEGISLATURE OF THIS PROVINCE.

HIS EXCELLENCY'S ANSWER

TO THE SAME,
With the Documents desired ;

AND
THE PROCEEDINGS HAD BY THE HOUSE OF
ASSEMBLY DURING THE 1ST SESSION 11TH
PROV. PARL. ON THE PASSING OF A
BILL FOR THE PAYMENT OF SALA-
RIES TO PRINCIPAL OFFICERS
OF THE GOVERNMENT.

Ordered by the House of Assembly to be printed.

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TORONTO :

M. REYNOLDS.

1836.

ADDRESS, MESSAGE, &c.

THURSDAY, 11th February, 1836.

To His Excellency Sir Francis Bond Head, Knight Commander of the Royal Hanoverian Guelphic Order, and of the Prussian Military Order of Merit, Lieutenant Governor of the Province of Upper Canada, &c. &c. &c.

MAY IT PLEASE YOUR EXCELLENCY:

We, His Majesty's dutiful and loyal subjects, the Commons of Upper Canada in Provincial Parliament assembled, humbly request that Your Excellency will lay before this House copies of all despatches from His Majesty's Government transmitted to Your Excellency's predecessor Sir John Colborne, during the years 1830, 1831, or 1832, relative to the independence of the Judges in this Province, and excluding them from seats in the Legislative and Executive Councils, as also any communication or correspondence at any time since the year 1830, between His Majesty's Government and the Executive Government of this Colony relative to a recommendation from His Majesty's Government that the Chief Justice of the Province should abstain from all proceedings in the Legislative Council, by which he might be involved in any political contention of a party nature—and also copies of all official correspondence between His Majesty's Government and the Government of this Province, relative to the cession by His Majesty of the revenue raised under the statute 14th George the 3rd, to the appropriation of the Legislature, and the particular provision for the several officers of the Government required by His Majesty to be made by the Legislature, on the cession of the said revenue.

MARSHALL S. BIDWELL,
Speaker.

*Commons House of Assembly, }
11th February, 1836. }*

F. B. HEAD,

The Lieutenant Governor transmits to the House of Assembly, in compliance with the address of the House, dated the 11th instant, copies of the public despatches from His Majesty's Secretary of State for the Colonies, to the Lieutenant Governor of this Province, during the years 1830.

1831, and 1832, relative to the independence of the Judges,—the surrender by His Majesty to the control of the Provincial Legislature of the Province of the revenue raised under the statute of the Imperial Parliament, of the 14th Geo. 3rd, Cap. 88,—and the provision for the principal officers of the Government, required by His Majesty, to be made by the Legislature, on the cession of the said revenue.

Government House, 25th February, 1836.

(Copy.)

No. 2.

*Downing Street, }
24th December 1830. }*

Sir,

You will see by the enclosed copies of despatches, which I have addressed to Lord Aylmer, that instructions have been conveyed to his Lordship with the hope of bringing to an amicable settlement the differences which have so long existed between the two branches of the Legislature of Lower Canada, in consequence of the right claimed by the Assembly, to appropriate the revenue raised under the British act of 14 Geo. 3d, which has hitherto been applied to the support of the civil government, under the warrants of the Lords Commissioners of the Treasury.

His Majesty's Government is of opinion that this important object will be best accomplished by placing the revenue in question at the complete disposal of the Provincial Legislature; and by calling upon the Assembly in return to provide for such a moderate civil list as may be indispensably necessary; in which the Lieutenant Governor, the Judges and other principal officers of the Government, whose salaries ought not to depend on the annual votes of the Legislature may be included.

This course having been deemed expedient in the Lower Province, every consideration of prudence and policy combine to render its application to Upper Canada almost a matter of course.

You will accordingly, taking the instructions which I have conveyed to Lord Aylmer as your guide, proceed to the arrangement of this important point, and in making the proposition, which it will be your duty to bring forward, you will not fail to assure the Assembly of the sincere and anxious desire of His Majesty to meet the wishes of His loyal and affectionate subjects in Upper Canada, and his confident expectation, that this feeling will be reciprocal on the part of their representatives.

I transmit to you No. 1, an estimate of the funds now at the disposal of the Crown, which it is proposed to give up to the appro

priation of the Assembly ; and No. 2, the civil list, which you will invite them to grant in lieu of these revenues, viz :

(No. 1.)

Customs duties, levied under the 14th Geo. 3rd, and Innkeepers' Licenses, at a moderate computation, £10,000	
Fee Fund	1,500
	<hr/>
	£11,500

(No. 2.)

The Civil List as explained in my despatch to Lord Aylmer may consist of three Classes as follows, viz :

1st Class.	
Lieutenant Governor	£3000
Provincial Secretary	300
Contingencies	300
	<hr/>
	£3,600
2nd Class.	
Chief Justice	£1,500
Two Puisne Judges	1,800
Attorney General	300
Solicitor General	100
Contingencies	300
	<hr/>
	£4,000
3rd Class.	
Pensions	£3,000
(To be reduced as vacancies occur to £1,000.)	
Miscellaneous	200
	<hr/>
	£3,200
	<hr/>
Total of the three classes	£10,800

It will not however be necessary to call upon the Legislature to grant the whole of the sum of £10,800 inasmuch as by the Provincial Act of 53rd Geo. 3rd, the sum of £2,500 Currency, (equal to £2131 Sterling) is granted towards the maintenance of the Civil Government ; the moderate sum of £8,669, is, therefore, all that is required for the completion of the proposed arrangement.

The manner in which it is intended to relieve the Lords of the Treasury from the appropriation of the duties raised under the 14th Geo. 3rd being fully detailed in my Despatch to Lord Aylmer, it is unnecessary for me to enter into any further expla-

nation on that part of the subject. The duration of the civil list must as in the Lower Province be fixed in Upper Canada either for the life of His Majesty or for a term of not less than seven years.

I have only in addition to express my earnest hope that no exertion on your part will be omitted to induce the Legislature to accede to the proposal, which you are instructed to make to them ; since, besides having the merit of settling a point of great importance, if not difficulty, it will place at the disposal of the Assembly, a sum larger, in amount than the Civil List for which they are called upon to provide.

I have, &c.

(Signed)

GODERICH.

Major General

Sir JOHN COLBORNE, K. C. B.

&c. &c. &c.

(Copy.)

No. 11.

Downing Street, }
24th December, 1830. }

MY LORD,

Amongst the first objects which have called for my attention since His Majesty was pleased to place the seals of the Colonial Office in my hands is the painful state of disunion, which has for so many years prevailed in Lower Canada respecting that part of the revenue, which is raised by duties levied under various acts of the British Parliament, and appropriated by warrants from the Lords of the Treasury. Your Excellency will doubtless have felt how seriously this state of things embarrasses all the operations of the local government. But whilst its present effect is to weaken the just influence and authority of the Executive power, its future consequences upon the connection between the Province and the Mother country, might become most disastrous, if not fatal. It appears to me therefore as it has appeared to my predecessor Sir George Murray, to be indispensably necessary, that an immediate and amicable adjustment of the question should be brought about, and His Majesty's Government is decidedly of opinion that any attempt at such an adjustment would be ineffectual, which did not involve the entire assignment of the revenue raised under the acts in question to the disposal of the Provincial Legislature, under a conviction that they will consent to such a reasonable grant of a civil list as may be necessary for ensuring, at all events, the independence of the Governor and Judges. I cannot think that such an assignment of these duties would be inconsistent with the honor and dignity of the Crown. The duties are neither levied nor appropriated by the mere Royal Prerogative, they owe their existence to a specific

Act of Parliament, passed at a time when there did not exist in the Province any legal means by which duties of that description could be imposed; and although it be true, that the Act of Parliament, which imposes them, directs the Lords of the Treasury to appropriate them, it must nevertheless be admitted, that the same Parliamentary authority might without any violation of the Royal Prerogative, have directed in the first instance, and might now direct by amendment, the appropriation of them in any manner.

The subject being thus disembarassed of the difficulties arising out of the Royal Prerogative and the dignity of the Crown, it resolves itself into a mere question of expediency—viz: whether the advantages supposed to be derived from retaining the existing mode of appropriation are or are not counterbalanced by the manifold evils occasioned by the increasing and apparently irreconcilable disunion between the Governor and the legislature of the Province. In considering this question it may at once be admitted, that there are conveniences attending the present system, which ought not to be undervalued in a country where the relations of the government and the people are not held together by the same sort of ancient ties, which unite the various classes of society in the parent state. But these conveniences may be bought at too dear a rate, and the experience of the last few years has convinced His Majesty's Government, that a different policy is not only expedient but indispensable. In order however to render the change effectual to the great object of restoring harmony and concord, it must be complete: To give up part of the duties in question to the disposal of the Legislature, and at the same time to reserve the remainder at the disposal of the Crown, as a matter of right, would on the one hand be a distinct admission of the principle, that the present mode of appropriation is defective, whilst on the other it would effectually prevent the concession from being either gracious or conclusive. Its ungraciousness would be in proportion to its inefficiency; and the arrangement never could be final so long as any part of the obnoxious practice were retained.

The principle, therefore, upon which His Majesty's Government is of opinion, that you ought to proceed in endeavouring to settle this question is derived from the practice of this country, as recently exemplified in that part of His Majesty's Speech from the throne upon the opening of the present Session, which refers to the civil list. His Majesty there gives up all his interest in his hereditary revenues, and in some other sources of his royal income, to the free disposal of parliament; and His Majesty asks in return, for such a civil list as Parliament may deem adequate for that important object. It is not attempted to balance an exact amount of the revenue given up against the amount of the civil list which the Legislature is invited to grant, but on the con-

trary whilst His Majesty freely gives up his interest in the revenues, which are thus left to Parliamentary disposal the amount of the civil list is left to be arranged upon principles in which it is intended to combine a reasonable economy, with a just consideration of what is due to the honor, the dignity and comfort of the Crown.

There is something in this mode of proceeding at once so simple in itself, so free from future difficulties and disagreements, so consistent with the King's honor and with the dutiful attachment of his people, that the King's Government cannot doubt that a proposition similar in principle and emanating from the same feelings will not fail to be received by His Majesty's faithful subjects, the Legislature of Lower Canada, as an undoubted proof of His Majesty's paternal anxiety for their welfare, his desire to consult their feelings and his confidence in the loyalty of his North American subjects.

The instruction, therefore, which I am now commanded by His Majesty to convey to you is, that you should at the earliest convenient period make a communication to the Legislature to the following effect :

That His Majesty taking into consideration the best mode of contributing to the prosperity and contentment of his faithful subjects of the Province of Lower Canada, places at the disposal of the Legislature all His Majesty's interest in those taxes, which are now levied in the Province by virtue of different acts of the British Parliament; and which are appropriated by the Treasury under His Majesty's commands, together with all fines and forfeitures levied under the authority of such acts. That His Majesty relying on the liberality and justice of the Legislature of Lower Canada invites them to consider the propriety of making some settled provision for such portion of the expenses of the Civil Government of the Province, as may upon examination appear to require an arrangement of a more permanent nature than those supplies which it belongs to the Legislature to determine by annual votes.

That His Majesty has directed an estimate to be prepared and laid before them, of the sum which may be required for that purpose; and that in directing the preparation of that estimate, His Majesty has been guided by a wish, never absent from his heart, to call upon his faithful subjects for no other supply than such as may appear to be required for the due execution of those services, which it is proposed to charge upon the Civil List.

His Majesty concedes the disposal of these revenues with cordial good will, and cannot doubt that it will be met with a reciprocal feeling by the Representatives of an attached and loyal people. Such being the nature of the communication which it will be your duty to make, in the King's name, to the Legislature. I have now to submit to you an estimate of that, which it is pro-

posed to concede, and that which the Assembly may be invited to grant as a Civil List.

The Revenues to be given up are as follows, viz :

Customs duties levied under the 14th Geo. 3, ch. 88, after deducting a portion for Upper Canada upon an average of two years,.....	£28,336	0	0
Licenses under do. and 41 Geo. 3,.....	2,764	0	0
Fines and forfeitures average of, two years,....	599	0	0

Total,.....£31,699 0 0

The Civil List to be proposed to the adoption of the Legislature should be divided like the Civil List in this country, into separate classes, with a definite expenditure assigned to each class.

It may consist of three,

1st—The Civil Government as far as regards the Governor and his immediate Executive Officers.

2nd—Judges and Administration of Justice.

3rd—Pensions and Miscellaneous Items to meet unforeseen Contingencies.

No. 1—May be composed of the following items :

	£	s.	d.	£	s.	d.
Governor's Salary,.....	4,500	0	0	.....	
Provincial Secretary,.....	400	0	0	.....	
Contingencies,.....	300	0	0	.....	
	5,200	0	0	5,200	0	0

No. 2, as follows :

Chief Justice,.....	1,500	0	0	.....	
do. Montreal,.....	1,200	0	0	.....	
6 Puisne Judges, 900 each,....	5,400	0	0	.....	
3 Provincial Judges,.....	1,600	0	0	.....	
Judge of Vice Admiralty Court,.	200	0	0	.....	
Attorney General,.....	300	0	0	.....	
Solicitor General,.....	200	0	0	.....	
Allowance to Judges for circuits,	275	0	0	.....	
Contingencies,.....	475	0	0	.....	
				11,150	0	0

3rd Class.

Pensions,.....	1,000	0	0	.....	
Miscellaneous,.....	1,750	0	0	2,750	0	0

Total 3 classes,.....£ 19,100 0 0

It will not, however, be necessary to call upon the Legislature to grant the whole of the sum of £19,100, inasmuch as by the Provincial Act of 35, Geo. 3, Chap. the sum of £5000, is permanently granted towards the maintenance of the Civil Gov-

ernment. The moderate sum of £14,100 is therefore all that is deemed necessary to ask for the completion of the proposed arrangement.

Having now stated to Your Lordship the nature and details of the proposition to be submitted to the Legislature, I proceed to explain the mode in which the arrangement can best be carried into effect.

As the duties with which it is proposed to deal in the manner above described, are appropriated by Acts of the British Parliament, the change in their disposition cannot take place without the sanction of the same authority—a bill will therefore be submitted to Parliament, in the course of the present session, for the purpose of releasing the Lords of the Treasury from their present obligation of appropriating the duties, and for authorising His Majesty to leave their appropriation to the Colonial Legislature. The date at which it is proposed that the bill should come in operation is on July 1st, 1832. This distant period is taken in order, on the one hand, to give full time for the Legislature of Lower Canada to make the necessary provision on their part; and on the other to enable His Majesty's Government to meet the possible (though I trust highly improbable) contingency of such a satisfactory result not taking place.

In order, however, to enable the government at home to give the earliest possible effect to the measures, which may be taken by the Colonial Legislature, for the satisfactory settlement of this question, it is proposed to give His Majesty in Council, a power to bring the British law into operation at an earlier period than July 1st, 1832. If therefore, the Canadian Act should provide for the commencement of the proposed civil list, in January 1st 1832, (which I should be inclined to recommend,) or at any earlier period, then His Majesty's government would lose no time in advising the issue of an order in Council, to accelerate the commencement of the British Act, so that the whole plan would come simultaneously into effect.

It only now remains for me to state, that the duration of the civil list may be either for the life of His Majesty, or for some definite term of years, not under seven, as may be more agreeable to the Provincial Legislature.

I trust, that the arrangements detailed in this despatch will be received in the spirit in which they are detailed, a spirit of conciliation and confidence. His Majesty is prepared to surrender a large and increasing revenue; he asks in return for a fixed and moderate Civil List, much less in amount than the revenue given up; and the settlement of this long agitated and perplexing question, will be deemed by His Majesty one of the happiest events of His reign, the glory of which (the people of Canada may be assured) will be the promotion of the happiness and content of

all classes of his subjects in every quarter of the Globe.

I have, &c.

(Signed)

GODERICH.

Lieut. General

Lord AYLMER, K. C. B.

&c. &c. &c.

(Copy.)

No. 16.

Downing Street, }
8th February, 1831. }

SIR,

In the despatch, dated the 24th December last, No. 2, which I had the honor to address to you on the subject of the Financial arrangements to be proposed to the Legislative Council and Assembly of the Province of Upper Canada, I signified to you His Majesty's pleasure, that you should propose to the Provincial Assembly to grant such a civil list as might be necessary for securing, at all events, the independence of the Governor and of the Judges. The various sums proposed in that despatch, for the maintenance of the Judges, amount together to the annual sum of £3,300. The other expenses of the proposed judicial establishment being required for the Attorney and Solicitor General, and contingencies, amounting together to £700.

In making this demand upon the liberality of his faithful Commons in Upper Canada, His Majesty was desirous to secure to his subjects in that part of his dominions, the full enjoyment of those advantages which have been so largely derived in this kingdom from the independence of the judicial office. A question of very grave importance connected with that subject, was not noticed in the despatch, to which I refer, because the ministers of the Crown were unwilling to submit to the King any opinion upon so important a topic, until they should have found an opportunity for more mature deliberation than had been practicable at the date of that despatch. I now proceed to convey to you the commands, which it is His Majesty's pleasure to issue, upon a full review of the great question of judicial independence in his Canadian Provinces.

The connexion which happily subsists between the Canadas and this kingdom, suggests the propriety of transferring to those Provinces every institution which the more ample experience of Great Britain recommends as calculated to promote at once the stability of Government and the welfare of society at large. There is no branch of our civil polity, which has been more fully proved to be conducive to these great ends than the establishment of judges independent at once on the royal authority, and on the pleasure of the popular branch of the Legislature.

There was not, I apprehend, any legal or constitutional rea-

son which would have prevented the King from granting the offices of the judges of England, during their good behaviour, but to render that principle immutable, it was necessary that Parliament should prescribe the form of commission, to be used on such occasions. Accordingly, the Statutes passed in the 13th year of the reign of William the Third, and in the first year of George the Third, have deprived the Crown of all discretion on the subject.

In conformity with these precedents, and in pursuance of the great general principle on which they were founded, the King is graciously pleased to command, that you do avail yourself of the earliest opportunity for proposing to the Legislative Council and Assembly of Upper Canada, the enactment of a bill declaring that the commissions of all the Judges of the supreme courts shall be granted to endure during their good behaviour, and not during the Royal pleasure, and you will in the name and on the behalf of His Majesty, assent to a bill for carrying that object into effect.

It is, of course, an essential condition of this arrangement, that an adequate and permanent provision should be made for the Judges, and I am happy to find, that the repeated assurances of the House of Assembly, preclude the possibility of any objection being made by that body to this part of the proposal.

In further pursuance of the general design of imparting to the Canadas the benefit of this important principle of the British constitution, I am to signify to you His Majesty's commands to communicate to the Legislative Council and Assembly, His Majesty's settled purpose to nominate, on no future occasion, any Judge as a member, either of the Executive or of the Legislative Council of the Province. Whatever reliance might be placed on the personal integrity of the Judges, it is desirable that they should be exempted from all temptation to interfere in Political controversies, and even from a suspicion of any such interference.

The single exception to this rule, will be that of the Chief Justice of Upper Canada, who will be a member of the Legislative Council, in order that they may have the benefit of his assistance in framing laws of a general and permanent character.

But His Majesty will not fail to recommend, even to that high officer, a cautious abstinence from all proceedings by which he might be involved in any political contentions of a party nature.

You will perceive that these rules are framed with reference to the corresponding practice in this kingdom, where although it has not been unusual to elevate the Chief Justice of the King's Bench, and other Chief Judges to the Peerage, the Puisne Judges cannot vote in either House of Parliament.

I am persuaded that the Council and Assembly of Upper

Canada will perceive in the measures which I have thus had the honor of explaining, an additional proof of the desire by which the King is at all times actuated to promote the best interests of that important part of the British Empire.

I have, &c.

(Signed)

GODERICH.

M. General

Sir John Colborne, K. C. B.

&c. &c. &c.

(Copy.)

No. 8.

Upper Canada, }
York, 21st March, 1831. }

MY LORD,

I have the honor to acknowledge the receipt of your letter of the 24th December, with copies of instructions, which have been conveyed to Lord Almer respecting the revenue proposed to be placed under the control of the Legislatures of these Provinces, and to acquaint your Lordship that I took an early opportunity of laying that important subject before the House of Assembly.

I regret to state that it was not considered expedient by the Assembly to grant the amount proposed in my message. They objected to provide for the part of the Lieutenant Governors salary, which had been always defrayed from the Casual and Territorial Revenue, and also for pensions of every description—and decided that the sum for contingencies ought to depend on an annual vote. But they have granted the sum of £6,500 permanently for the salaries of the undermentioned officers, and have repealed the Provincial Act of the 56 Geo. 3d, chap. 26.

Salary of the Governor.....	£2000
“ “ Judges.....	3,300
“ “ Attorney General.....	300
“ “ Solicitor General.....	200
“ “ 5 Executive Councillors	500
“ “ Clerk of the Council..	200

I have without hesitation assented to the bill, being persuaded that if the independence of the principal officers and Judges can be ensured it is most desirable to dispose of this question as soon as possible, in a manner that will give satisfaction generally in the Province.

Your Lordship will perceive from the enclosed copies of my communications to the Assembly, that it was left entirely to them to adopt the arrangement which might appear best suited to

the interests of the Province, as to the duration of the grant in lieu of the revenue proposed to be relinquished.

I however think that much inconvenience would have arisen had the sum been granted for a limited period. A copy of the bill passed for the grant is enclosed.

I have &c.

(Signed)

J. COLBORNE,

The Right Hon'ble

Lord Viscount GODERICH,

&c. &c. &c.

(Copy.)

No. 26.

Downing Street,
23d May, 1831. }

SIR,

I have received and laid before the King your despatch of the 21st March last, No. 8, announcing that you had assented to a bill for settling the civil list of the Province of Upper Canada; and I have the satisfaction of assuring you, that His Majesty entirely approves of your conduct upon that occasion.

It is certainly to be regretted that the Assembly did not think proper to grant a civil list to the full extent, which you had been instructed to ask; but as the provision, which they have made limited as it is, is nevertheless permanent instead of temporary, and as the arrangement has been made without bringing into inconvenient discussion the question of the casual revenue, I cannot but flatter myself that the result will prove advantageous to the Province, and tend to maintain due harmony and good understanding between the different branches of the Legislature.

The bill which had been introduced into Parliament at the commencement of the late session had not been passed into a law before the dissolution took place. His Majesty's formal assent to the Provincial Act cannot therefore be immediately given; but as soon as the new Parliament meets the bill will be introduced.

I think you acted with sound discretion in so far departing from your instructions as not to include the Fee Fund amongst the revenues to be given up to the Legislature. It is very doubtful whether that additional concession would have induced the Assembly to make a larger grant, and you would in that case not have had at your command adequate means for meeting those charges which the Assembly declined to include in the Civil List, and which they probably would not be disposed to provide for by annual votes. I trust however, that the addition of the Fee Fund to the other resources at your disposal will relieve you from all difficulty on that score.

But as that addition will not be equal to the additional charges

ges to be provided, it will be necessary to make a distribution of the Casual Revenue different in some degree from that contained in my despatch of the 24th December last, No. 2.

The Casual Revenue may now be estimated as follows :

Canada Company,.....	£ 16,000	0	0
Lands and Timber,.....	5,000	0	0
Incidental,.....	1,000	0	0
Fee Fund,.....	1,500	0	0
	<u>£ 23,500</u>	<u>0</u>	<u>0</u>

Deduct charge of collection,.....	2,000	0	0
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Total,.....	<u>£ 21,500</u>	<u>0</u>	<u>0</u>
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It may safely bear the following charges :

Lieutenant Governor to complete his salary to £3000,.....	£ 1,000	0	0
Retired Judges,.....	2,700	0	0
Compensation in lieu of Fees,.....	2,566	0	0
Royal Grammar School,.....	500	0	0
University,.....	1,000	0	0
Protestant Clergy (in lieu of Parliamentary Grant,).....	3,000	0	0
Presbyterian Clergy,.....	1,000	0	0
Roman Catholic Bishop,.....	500	0	0
do Clergy,.....	1,000	0	0
Pensions (supposed to be about,).....	1,700	0	0
Surveyor General,.....	300	0	0
Emigration,.....	5,000	0	0
Total,....	<u>£ 20,266</u>	<u>0</u>	<u>0</u>

Leaving a reserved balance of rather more than £1,200 which would be liable to increase as proportionate as the floating charges, such as pensions, retired allowances, and compensations for fees may fall in.

This distribution may however, be liable to change before the Civil List Act comes into operation, and if you have any suggestion to offer as to the proposed application of the casual revenue, I shall be glad to receive them, at as early a period as may be convenient.

I have, &c.

(Signed) GODERICH.

M. General

Sir J. Colborne, K. C. B.

&c. &c. &c.

Copy,

No. 42.

Downing Street,
30th Sept. 1831. }

SIR,

With reference to my despatch of the 23rd May last, No. 26, I have the honor to transmit to you an Act of Parlia-

ment passed in the present Session to amend the statute 14 Geo. 3, ch. 88, which places at the disposal of the Legislature of Upper Canada the revenues of that Province arising from the statute of Geo. 3.

The Act having been passed on the 22nd instant, it has not been practicable since that time to issue the necessary order of His Majesty in Council for confirming the Provincial Statute of the first year of His Majesty's reign, c. 14. That order will, however, be issued by the earliest possible opportunity. The Provincial Act will, in the mean time, have its operation.

I have, &c.

Major General, (Signed) GODERICH.

Sir J. Colborne, K. C. B.

&c. &c. &c.

J. COLBORNE,

The Lieutenant Governor has the satisfaction to inform the House of Assembly, that the King places at the disposal of the Provincial Legislature, all His Majesty's interest in the duties which are collected under the British Statute of the 14th George 3rd, chap. 88, and which have hitherto been applied to the support of the civil government, by warrants of the Lords Commissioners of the Treasury.

His Majesty in conceding the complete disposal of this increasing revenue, has naturally, the confident expectation that so great a proof of his anxious desire to consult the wishes of his faithful and loyal subjects in Upper Canada, will be met with a reciprocal feeling by their representatives.

The Lieutenant Governor is therefore instructed to acquaint the House that His Majesty's Government trusts that the Legislature will think it indispensable that provision should be immediately made for the salaries of the Lieutenant Governor, the Judges, and principal officers of the Government, and for such expenses of the civil government, and administration of justice as may appear, upon examination of the estimates in possession of the House, to require more permanent arrangement than the supplies which are granted by annual vote.

The sum of eight thousand pounds is deemed sufficient by His Majesty's Government for this important object, exclusive of the sum granted permanently by a Provincial Act, towards the maintenance of the civil government.

The revenue to be ceded cannot be calculated at less than eleven thousand five hundred pounds sterling, and it will be highly gratifying to the Lieutenant Governor to concur in any measure that may accelerate the final arrangements proposed by His Majesty's Government, to give effect to His Majesty's gracious intentions, and to the decision of the British Parliament, when the Lords of the Treasury may be released from

their obligation of appropriating in future the duties referred to in this communication.

Government House, 28th February, 1831.

Tuesday, 1st March, 1831.

J. COLBORNE,

The Lieutenant Governor, with reference to his communication of yesterday, transmits for the information of the House of Assembly estimates of the expenses of the Civil Government.

Government House, 1st March, 1831.

ESTIMATE of EXPENSES requiring a more permanent arrangement than an annual vote.

	£	s.	d.
Salary of the Lieutenant Governor,.....	3000	0	0
Judges,.....	3300	0	0
Attorney General,.....	300	0	0
Solicitor General,.....	100	0	0
Secretary of the Province,	300	0	0
Retired Judges,.....	2700	0	0
Contingent and Miscellaneous,	800	0	0
	Sterling £	10500	0 0
ESTIMATE of EXPENSES of the Civil Government continued.			
Speaker of the Legislative Council,.....	360	0	0
Five Executive Councillors,.....	500	0	0
Receiver General,.....	200	0	0
Surveyor General,.....	300	0	0
Clerk of the Executive Council,.....	200	0	0
Clerk of the Crown and Pleas,.....	100	0	0
PUBLIC OFFICES.			
<i>Government Office,</i>			
Secretary's salary,.... £182 10 0			
Three Clerks,..... 550 0 0			
		732	10 0
<i>Executive Council Office,</i>			
Two Clerks,.....		332	10 0
<i>Secretary and Registrar's Office,</i>			
One Clerk or Deputy Secretary,...		150	0 0
<i>Receiver General's Office,</i>			
Two Clerks,.....		332	10 0
<i>Surveyor General's Office,</i>			
Draftsman and four Clerks,.....		726	5 7½
<i>Inspector General's Office,</i>			
Two Clerks,.....		332	10 0
Contingent expenses of the Public Offices,....	1500	0	0
Contingent expenses of the Administration of Justice,	1800	0	0
	Sterling £	7566	5 7½

Wednesday, 7th March, 1831.

Agreeably to the order of the day, the House went into committee of the whole on the message of His Excellency, the Lieutenant Governor, relative to the duties under 14th Geo. 3d and estimate for support of the civil government.

Mr. Elliott was called to the chair.

The House resumed.

Mr. Elliott reported that the committee had agreed to a resolution which he was directed to submit for the adoption of the House.

The report was received, and the resolution was adopted *nem. con.* as follows :

Resolved—That an humble address be presented to His Excellency, the Lieutenant Governor, requesting His Excellency to lay before this House, for its information, any despatches from His Majesty's Government upon which His Excellency may have founded his messages to this House, of the 28th February and 1st March, also a full and particular account of the casual and territorial revenue for the last twelve months.

PRESENT—Messieurs *Attorney General, Beardsley, Berczy, Bidwell, Boulton, Brown, Buell, Burwell, Campbell, Chisholm, Clark, Cook, J. Crooks, W. Crooks, Duncombe, Elliott, A. Fraser, Howard, Ingersol, Jarvis, Ketchum, McCall, D. Macdonald, Mackenzie, McMartin, Maçon, Morris, Mount, Perry, Randal, Robinson, Roblin, Samson, Shaver, Solicitor General, Thomson, Vankoughnet, White, and J. Willson.*

Mr. Mackenzie, seconded by Mr. D. Macdonald, moves, that Messrs. Ketchum and Shaver be a committee to draft and report an address to His Excellency, pursuant to the resolution on Revenue.—*Ordered.*

The draft was presented and read twice.

Thursday, 8th March, 1831.

The address to His Excellency, the Lieutenant Governor, on the subject of the Revenue, &c. was read the third time and passed.

To His Excellency Sir John Colborne, Knight Commander of the Most Honorable Military Order of the Bath, Lieutenant Governor of the Province of Upper Canada, Major General Commanding His Majesty's Forces therein, &c. &c. &c.

MAY IT PLEASE YOUR EXCELLENCY :

We, His Majesty's dutiful and loyal subjects, the Commons of Upper Canada in Provincial Parliament assembled, humbly request your Excellency to lay before this House, for its information, any despatches from His Majesty's Government, upon which your Excellency may have founded your messages to this House of the 28th February, ultimo, and 1st March, instant, on Revenue;—also, a

full and particular account of the receipts and expenditure of the Casual and Territorial Revenue for the last twelve months.

ARCHIBALD McLEAN,

Commons' House of Assembly, } *Speaker.*
bly, March 8th, 1831. }

Wednesday, 9th March, 1831.

The committee appointed to wait upon His Excellency with the address on revenue, &c. reported the following answer :

GENTLEMEN :

Although I do not feel myself authorised to transmit to the House of Assembly, the despatches which are applied for in this address, I am fully prepared to afford the House any information in my power connected with the subject which I have been directed by His Majesty's Government to bring forward.

I will direct the account of the casual and territorial revenue to be laid before the House.

The House was put into committee of the whole on the message from His Excellency the Lieutenant Governor on crown revenue and salaries.

Mr. Elliott was called to the chair.

The House resumed.

Mr. Elliott reported progress and asked leave to sit again to-morrow.

Thursday, 10th March, 1831.

The House went into committee of the whole on the message of His Excellency the Lieutenant Governor, on the subject of the revenue under 14 Geo. 3rd, and estimate for support of the civil government.

Mr. Elliott was called to the chair.

The House resumed.

Mr. Elliott reported that the committee had agreed to two resolutions, which he was requested to submit for the adoption of the House.

The report was received.

The first resolution was then put and carried as follows :

Resolved—That the revenues arising under an Act passed in the 14th year of His late Majesty King George the Third, entitled “An Act to establish a fund towards further defraying the charges of the administration of justice and the support of the civil government within the Province of Quebec, in America”—and heretofore appropriated by the Lords Commissioners of His Majesty's Treasury, together with the sum of two thousand five hundred pounds granted annually to His said late Majesty, King George the Third, his heirs and successors towards defraying the expenses of the adminis-

tration of the civil government of this Province, amount to eighteen thousand five hundred pounds, and upwards.

The second resolution was then put as follows :

Resolved—That so soon as the revenues arising from and under the said Act passed in the 14th year of His late Majesty George 3rd shall, by Act of the Imperial Parliament, or otherwise, be placed at the control of the Legislature of this Province, it will be expedient to repeal the Act passed fifth Session of the sixth Parliament of this Province granting to His Majesty the said sum of two thousand five hundred pounds, and in lieu of the said sum of two thousand five hundred pounds, and the revenues accruing under the said Act passed in the said 14th year of His said late Majesty's reign, to grant to His Majesty the annual sum of £—— and to his heirs and successors for defraying the following charges of the administration of the civil government of this Province, that is to say :

The salary of the Lieutenant Governor,.....	£2000	0	0
The salaries of the Judges of His Majesty's Court of King's Bench,.....	3300	0	0
The salary of the Attorney General,.....	300	0	0
The salary of the Solicitor General,.....	200	0	0
The salary of the Clerk of the Executive Coun- cil,.....	200	0	0
The salaries of five Executive Councillors,.....	500	0	0

On which the House divided, and the yeas and nays were taken as follows :

YEAS—MESSIEURS,

Att'y General,	J. Crooks,	Jessup,	Morris,
Berczy,	W. Crooks,	Jones,	Robinson,
Boulton,	Elliott,	Lewis,	Samson,
Burwell,	A. Fraser,	McMartin,	Sol. General,
Chisholm,	Ingersoll,	Macnab,	Vankoughnett,
Clark,	Jarvis,	Maçon,	Warren—24.

NAYS—MESSIEURS,

Beardsley,	Cook,	McCall,	Randal,
Bidwell,	Howard,	D. Macdonald,	Roblin,
Buell,	Ketchum,	Mackenzie,	Shaver,
Campbell,	Lyons,	Perry,	White—16.

Question carried—majority 8—and the resolution was adopted.

A bill founded on the resolution was ordered to be drafted—the draft was reported and read the first time.

Mr. Morris, seconded by Mr. Chisholm, moves that it be—

Resolved—That it is expedient to address His Majesty thanking him for the gracious attention which he has been pleased to bestow on matters of important interest to his faithful subjects of this Province, and informing His Majesty that the House of Assembly in making permanent provision for the support of certain officers of the Government, especially that for the respectable maintenance of the Judges, have

done so with a cordial desire to meet the wishes of His Majesty's Government, by placing the administration of justice beyond the reach of popular influence, and acquainting His Majesty that the House of Assembly in passing a bill to secure the independency of the Judges, have been actuated by a confident hope that His Majesty will not hesitate to place these officers in a situation which will also render them independent of the Crown, and to that end imploring His Majesty to allow the Judges of this Province to hold their office during good behaviour, and that Messrs. Berczy and Robinson be a committee to draft and report the same, and that the thirty second rule of this House be dispensed with, so far as relates to the same.

Which was ordered.

A draft of an address was reported and read a first time.

Friday 11th March, 1831.

The bill granting a permanent salary to the principal officers of the Executive Government was read a second time.

On the question for committing the bill, Mr. Mackenzie seconded by Mr. Ketchum, moves that the House do go into committee on the bill, on the first day of April next.

On which the yeas and nays were taken as follows:

YEAS—MESSIEURS,

Beardsley,	Duncombe,	D. McDonald,	Shaver,
Bidwell,	Howard,	Mackenzie,	White—17.
Buell,	Ketchum,	Perry,	
Campbell,	Lyons,	Randal,	
Cook,	McCall,	Roblin,	

NAYS—MESSIEURS,

Att'y General,	W. Crooks,	McMartin,	Vankoughnet,
Berczy,	Elliot,	Macnab,	Warren,
Boulton,	A. Fraser,	Magon,	J. Willson,
Burwell,	Jarvis,	Morris,	W. Willson—25.
Chisholm,	Jessup,	Robinson,	
Clark,	Jones,	Samson,	
J. Crooks,	Lewis,	Sol. General,	

The question of amendment was decided in the negative by a majority of eight, and the House went into committee of the whole on the bill.

Mr. Magon was called to the chair.

The House resumed.

Mr. Magon reported the bill amended.

The report was received.

On the question for the third reading of the bill to-morrow.

Mr. Attorney General, seconded by Mr. Berczy, moves in amendment, that the bill be engrossed and read a third time this

day, and that the forty first rule of this House be dispensed with so far as relates to the said bill.

On which the House divided and the yeas and nays were taken as follows :

YEAS—MESSIEURS,

Att'y General,	Elliott,	McMartin,	Sol. General,
Berczy,	A. Fraser,	Macnab,	Vankoughnet,
Boulton,	Ingersoll,	Magon,	Warren,
Burwell,	Jarvis,	Morris,	J. Willson—25.
Chisholm,	Jessup,	Robinson,	
J. Crooks,	Jones,	Roblin,	
W. Crooks,	Lewis,	Samson,	

NAYS—MESSIEURS,

Beardsley,	Cook,	D. Macdonald,	White,
Bidwell,	Howard,	Mackenzie,	W. Wilson—17.
Buell,	Ketchum,	Perry,	
Campbell,	Lyons,	Randal,	
Clark,	McCall,	Shaver,	

Question carried, majority eight.

Mr. Perry, seconded by Mr. Bidwell, moves that it be resolved, that it will suit the convenience of this House, to be prorogued on Saturday next, and that the Speaker be directed to communicate the same to His Excellency the Lieutenant Governor.

On which the yeas and nays were taken :

YEAS—MESSIEURS,

Beardsley,	Cook,	Lyons,	Perry,
Bidwell,	Howard,	McCall,	Roblin,
Buell,	Jones,	D. Macdonell,	Shaver,
Campbell,	Lewis,	Mackenzie,	White—16.

NAYS—MESSIEURS,

Att'y General,	W. Crooks,	McMartin,	Sol. General,
Berczy,	Elliott,	Macnab,	Vankoughnet,
Boulton,	A. Fraser,	Magon,	Warren,
Burwell,	Ingersoll,	Morris,	J. Willson,
Chisholm,	Jarvis,	Randal,	W. Wilson—26.
Clark,	Jessup,	Robinson,	
J. Crooks,	Ketchum,	Samson,	

Question lost, majority ten.

The bill granting permanent salaries to the principal officers of the Executive government was read the third time.

Mr. Perry, seconded by Mr. Bidwell, moves, in amendment to the bill, that after the words "His Majesty," the words "his heirs and successors," be expunged.

On which the yeas and nays were taken :

YEAS—MESSIEURS,

Beardsley,	Cook,	McCall,	Randal,
Bidwell,	Howard;	D. McDonald,	Roblin,
Buell,	Ketchum,	Mackenzie,	Shaver,
Campbell,	Lyons,	Perry,	White—17.
Clark,			

NAYS—MESSIEURS,

Att'y General,	Elliott,	Lewis,	Samson,
Berczy,	A. Fraser,	McMartin,	Sol. General,
Boulton,	Ingersol,	Macnab,	Vankoughnet,
Burwell,	Jarvis,	Magon,	Warren,
Chisholm,	Jessup,	Morris,	J. Willson,
J. Crooks,	Jones,	Robinson,	W. Wilson—25.
W. Crooks,			

Question lost, majority eight.

In amendment, Mr. Bidwell, seconded by Mr. Perry, moves, that the following clause be added as a rider :

" And be it further enacted by the authority aforesaid, that the salaries hereby granted to the Chief Justice and Judges of His Majesty's Court of King's Bench, shall not be paid until they shall be appointed to hold their offices during good behaviour, subject nevertheless to be removed by an address from the Legislative Council and House of Assembly; and that from and after the time when the said salaries shall be paid in pursuance of the provisions of this Act, the said Chief Justice and Judges shall be incapable, while they shall retain their said offices, of holding a seat in the Legislative Council, Executive Council or House of Assembly of this Province."

On which the House divided, and the yeas and nays were taken as follows :

YEAS—MESSIEURS,

Beardsley,	Cook,	McCall,	Randal,
Bidwell,	Howard,	D. McDonald,	Roblin,
Buell,	Ketchum,	Mackenzie,	Shaver,
Campbell,	Lyons,	Perry,	White—17.
Clark,			

NAYS—MESSIEURS.

Att'y General,	Elliott,	McMartin,	Vankoughnet,
Berczy,	A. Fraser,	Macnab,	Warren,
Boulton,	Ingersol,	Magon,	J. Willson,
Burwell,	Jarvis,	Morris,	W. Wilson—25.
Chisholm,	Jessup,	Robinson,	
J. Crooks,	Jones,	Samson,	
W. Crooks,	Lewis,	Sol. General,	

Question lost, majority 8.

In amendment, Mr. Mackenzie, seconded by Mr. Shaver, moves, that the following proviso be added to the second clause

of the bill, as a rider, "provided always, that no clergyman, minister, or teacher, of any religious denomination shall be capable of holding the said office of Executive Councillor within this Province."

On which the yeas and nays were taken.

YEAS—MESSIEURS,

Beardsley,	Clark,	Lyons,	Randal,
Bidwell,	Cook,	McCall,	Roblin,
Buell,	Howard,	Mackenzie,	Shaver,
Campbell,	Ketchum,	Perry,	White—16.

NAYS—MESSIEURS,

Att'y General,	W. Crooks,	Lewis,	Robinson,
Berczy,	Elliott,	D. McDonald,	Samson,
Boulton,	A. Fraser,	McMartin,	Sol. General,
Burwell,	Ingersoll,	Macnab,	Vankoughnet,
Chisholm,	Jarvis,	Magon,	Warren,
J. Crooks,	Jones,	Morris,	J. Willson—24 .

Question lost, majority 8.

On the question for passing the bill, the yeas and nays were taken as follows :

YEAS—MESSIEURS,

Att'y General,	W. Crooks,	Lewis,	Samson,
Berczy,	Elliott,	McMartin,	Sol. General,
Boulton,	A. Fraser,	Macnab,	Vankoughnet,
Burwell,	Ingersoll,	Magon,	Warren,
Chisholm,	Jarvis,	Morris,	J. Willson,
Clark,	Jessup,	Robinson,	W. Wilson—26.
J. Crooks,	Jones,		

NAYS—MESSIEURS,

Beardsley,	Cook,	McCall,	Randal,
Bidwell,	Howard,	D. McDonald,	Roblin,
Buell,	Ketchum,	Mackenzie,	Shaver,
Campbell,	Lyons,	Perry,	White—16.

Question carried, majority ten, and the bill was signed.

Saturday, 12th March, 1831.

Agreeably to the order of the day, the address to His Majesty on the subject of the revenue arising to this Province under the 14th Geo. 3d. and the independency of the Judges, was read a second time, and referred to the committee of the whole House.

Mr. Macnab was called to the chair.

The House resumed.

Mr. Macnab reported the address as amended.

The report was received, and the address was ordered to be engrossed and read a third time on Monday next.

Monday, 14th March, 1831.

Agreeably to the order of the day, the address to His Majesty on the subject of the independency of the Judges, was read a third time.

Mr. Perry, seconded by Mr. Shaver, moves in amendment, that the following words be added to the address, "and that your Majesty will also be pleased to take the necessary steps for excluding the Judges from seats in the Legislative Council in this Province."

On which the House divided, and the yeas and nays were taken as follows :

YEAS—MESSIEURS,

Beardsley,	Ketchum,	Mackenzie,	Roblin,
Bidwell,	Lyons,	Perry,	Shaver,
Clark,	D. McDonald.	Randal,	White,—13.
Howard,			

NAYS—MESSIEURS.

Boulton,	Elliott,	Macnab,	Samson,
Burwell,	A. Fraser,	Magon,	Sol. General,
Chisholm,	Ingersoll,	Morris,	Warren,
J. Crooks,	Jarvis,	Robinson,	J. Willson—18.
W. Crooks,	Jessup,		

Question lost, majority 5.

The address was then passed nem. con. and signed by the Speaker, as follows :

To the King's Most Excellent Majesty:

Most Gracious Sovereign :

We, Your Majesty's most dutiful and loyal subjects, the Commons of Upper Canada in Provincial Parliament assembled, most humbly approach Your Majesty to thank Your Majesty, for the gracious attention which you have been pleased to bestow on matters of important interest to your faithful subjects of this Province, and we take this occasion to inform Your Majesty that in making permanent provision for the support of certain Officers of the Government, especially that for the re-

spectable maintenance of the Judges, we have been guided by a cordial desire to meet the wishes of your Majesty's Government by placing the administration of justice beyond the reach of popular influence; and we respectfully acquaint your Majesty that in passing a bill to secure the independence of the Judges, we have been actuated by a confident hope that your Majesty will not hesitate to place these officers in a situation which will also render them independent of the Crown, and to that end we implore your Majesty to allow the Judges of this Province to hold their office during good behaviour, subject nevertheless to be removed upon the address of both houses of the Provincial Legislature.

ARCHIBALD McLEAN,
Speaker.

Commons House of Assembly }
14th March, 1831. }

PRESENT—Messieurs *Attorney General, Beardsley, Bidwell, Boulton, Burwell, Chisholm, Clark, James Crooks, William Crooks, Duncombe, Elliott, A. Fraser, Howard, Ingersoll, Jarvis, Jessup, Ketchum, Lyons, D. McDonald, Mackenzie, Macnab, Magon, Morris, Perry, Randal, Robinson, Roblin, Samson, Shaver, Solicitor General, Warren, White and John Willson.*

Mr. Morris, seconded by Mr. Burwell, moves that the address to His Majesty respecting the independency of the Judges be transmitted to the Honorable the Legislative Council with a request that that Honorable House will be pleased to concur therein.

Tuesday, 15th March, 1831.

The Master-in-Chancery brought down from the Honorable the Legislative Council a message which was read as follows:

MR. SPEAKER,

The Legislative Council request a conference with the Commons House of Assembly on the subject matter of the address to His Majesty transmitted to this House for their concurrence yesterday by message, respecting the independence of the Judges, and have appointed the Honorable Messrs. Dickson and Wells to manage the same on the part of the Legislative Council, who will be ready to meet a committee on the part of the Commons House of Assembly, presently, for that purpose, in the joint committee room.

JOHN B. ROBINSON, Speaker.

Legislative Council Chamber, }
15th day of March, 1831. }

Messrs. Samson, Solicitor General, D. McDonald, and J. Crooks were appointed conferees on the part of this House, for the above purpose.

Mr. Solicitor General, from the select committee of conference, with the Honorable the Legislative Council, on the subject of an address to His Majesty on the independency of the Judges, reported a series of resolutions which were read as follows :

Resolved—That it appears to the Legislative Council, that in consequence of the representations which have proceeded from this Province, and from Lower Canada, the attention of His Majesty's Government and of the Imperial Parliament, has already been particularly applied to the proposition of making such a change in the terms of the commissions to the Judges, that it shall not be in the power of His Majesty to remove them unless upon an address of both Houses of the provincial Legislature.

Resolved—That a consideration of the proposed change seems to have resulted in the conviction, that it is not expedient at present, which opinion the Legislative Council, from a recollection of past occurrences, are disabled from controverting.

Resolved—That if the Legislative Council did consider a change expedient, they would deem it just and prudent to provide that a Judge should not be finally removed from office by any authority in this Province, without allowing to him the power of appealing to the tribunal of the King and Privy Council.

Resolved—That as His Majesty cannot entertain this question with any other view than to render the administration of justice pure and satisfactory, the Legislative Council relies with confidence upon the wisdom of His Majesty, and upon his gracious disposition to consult the peace and welfare of this Province by allowing the appointment of the Judges to rest upon such a footing as may be found by experience to be most conducive to that end.

Resolved—That entertaining this reliance, the Legislative Council are of opinion they ought to forbear to urge upon His Majesty any particular change in the commission of the Judges, being persuaded so long as His Majesty's Judges preserve a proper regard to the duties of their high office, they are in fact perfectly *independent*, and that if it is thought necessary to afford any additional security in that respect, the very liberal conduct of the Legislature in providing for them respectable and permanent salaries, in the manner now proposed, cannot fail to induce His Majesty to adopt any proper measure for that purpose.

15th March, 1831.