

U P P E R C A N A D A.

RETURN to several Addresses to HIS MAJESTY, dated 31 July 1832;—for,

- 1.—COPY of an ADDRESS to HIS MAJESTY, from the House of Assembly of *Upper Canada*, on the Administration of Justice, dated 14th March 1829; which Address that House humbly prayed His Majesty to lay before the House of Commons of *Great Britain and Ireland*.
- 2.—COPY of the ADDRESS to HIS MAJESTY, concerning an Established Church, from the House of Assembly of *Upper Canada*, agreed to in the Ninth Provincial Parliament; dated March 20th, 1828.
- 3.—COPY of the RESOLUTIONS agreed to in the Tenth Provincial Parliament of said Province by the House of Assembly, on the 13th January 1830, concerning a dominant Church connected with the Government, and concerning the appointment of a Chaplain.
- 4.—COPY of the ADDRESS to HIS MAJESTY, from the present House of Assembly of *Upper Canada*, agreed to in their last Session 1831–2, praying that the Clergy Reserves may be applied to the purposes of Education, and stating that a large majority of the Inhabitants of the Province are averse to the establishment of any exclusive or dominant Church.

Colonial Department, Downing Street, }
15th August 1832.

R. W. HAY.

(*Mr. Hume.*)

Ordered, by The House of Commons, to be Printed,
16 August 1832.

L I S T.

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Upper Canada; dated 14 March 1829 - - - - - p. 3
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Upper Canada; dated 20 March 1828 - - - - - p. 5
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UPPER CANADA.

No. 1.

COPY of an ADDRESS to HIS MAJESTY, from the House of Assembly of
Upper Canada; dated 14th March 1829.

TO THE KING'S MOST EXCELLENT MAJESTY.

MOST GRACIOUS SOVEREIGN,

WE, Your Majesty's dutiful and loyal Subjects, the Commons of Upper Canada, in Provincial Parliament assembled, humbly request Your Royal attention to the dependent and very unsatisfactory state of the Judiciary in this Country; and We further pray that our earnest wishes and solicitude expressed in this Address to Your Majesty, may in our behalf be laid before Your Majesty's faithful Commons in Imperial Parliament assembled.

In former Sessions of the Provincial Legislature, we pressed this painful and now alarming subject upon Your Royal consideration, representing the expediency of exempting the Chief Justice in this Province from the duties imposed upon him in the Executive Council, and of rendering the Judges independent of the Crown and of the people.

During the present Session, we have received from His Excellency the Lieutenant Governor, a Message, from which it appears, that on the subject of the Judges being commissioned to hold office during good behaviour, Your Majesty's Government find there are many difficulties to which, it is apprehended, this House may not have adverted, and that it is with a view solely to the welfare of the Province, and to the impartial administration of Justice, that Your Majesty's Government hesitate to remove from the Judges in this Province their direct responsibility to the Crown.

Upon so important a subject, involving the interests, the rights, the liberties, and the very lives of the people of this Province, it becomes us with earnestness to repeat our humble remonstrances against the present state of things.

We regard with grateful recollection the memorable declaration of His late Most Gracious Majesty from the Throne, "that he looked upon the independence and "uprightness of the Judges as essential to the impartial administration of Justice, "as one of the best securities of the rights and liberties of his Subjects, and as "most conducive to the honour of the Crown." In this respect we rejoice at the unparalleled happiness of the people of England; we cannot however but feel that as a portion of Your Majesty's free and glorious Empire, we also are equally interested and entitled to have justice administered amongst us by independent Judges, equally able to appreciate the value of so great a blessing, and disposed with constitutional jealousy to watch over the judicial character, to preserve it unsullied by unjust reproach and unawed by the vindictive exercise of the Royal Prerogative by the Provincial Authorities.

In this Province, it is exceedingly desirable and even necessary that the Court of King's Bench should for many years to come be wholly composed of Judges selected from the English Bar; Judges who would in that case be as free as possible from the entanglements of family connexions, the influence of local jealousies, and the contamination of provincial politics: without such a change, Justice never can in this Country be administered with purity, or rise above suspicion.

We duly value the assurance of Your Majesty, conveyed in the Message of His Excellency, "that the direct responsibility of our Judges to the Crown is enforced "by Your Majesty only on the most serious occasions, and never in respect to "any act which can be properly considered judicial." But although Your Majesty is thus graciously pleased to declare that Your Majesty in the exercise of Your Royal Prerogative will be governed by a maxim so consonant to British Justice,

yet that assurance, while it is grounded upon the continual dependency of our Judges, can afford no sufficient and practical remedy against the abuse of Your Majesty's Royal Prerogative by the Provincial Administration. This abuse of Your Majesty's Royal Prerogative has been flagrantly manifested by the late violent, precipitate and unjustifiable removal of the Honourable Mr. Justice Willis from the Court of King's Bench in this Province.

The pretence for this almost irreparable wound to the Constitution appears to have been the declaration of an opinion by that learned and upright Judge, upon the constitution of the Provincial Court of King's Bench, which opinion was evidently expressed to explain and justify his submission to a conscientious conviction of the impropriety of knowingly proceeding in the administration of the law in a Court not organized as the law requires.

By the Provincial Act erecting that Court, it is wisely provided "that a Chief Justice, together with two Puisne Judges, shall preside therein." No explanation can add to the clearness of that provision, so obviously conducive to the safety and liberty of the subject; and it has become our urgent duty humbly to declare to Your Majesty, that our duty forbids us to yield to the attempts of the local Administration to entail upon us the dangerous encroachments made in years of past misrule, by establishing such a construction of that law as would place the rights and liberties, the property and lives of the people of this Province, at the disposal of one, while a liberal salary is provided for three Judges.

The opinion of the learned Judge became officially known to the local Government some weeks before the commencement of the Term in which it was expressed.

Finding that no step was taken to organize the Court according to law, and avert the consequences inevitably following pertinacity in the error, Mr. Justice Willis honourably withdrew from a scene, by a continuance in which he must have compromised his judicial character. Under these circumstances, it appears that the Executive availed itself of the dependency of the Judiciary, and Mr. Justice Willis was unnecessarily and violently removed from his office, because, educated in no school of subservient principles, he would not yield to doubtful expediency and unlawful usage.

We are not insensible of the advantages of the provision against granting Offices in Your Majesty's Colonies in America to persons resident or intending to reside in Great Britain; a provision manifestly intended to apply particularly (perhaps exclusively) to offices which could be exercised by Deputy, and therefore farmed out to the best bidder; but it is with concern and dismay that the people of this Province have witnessed the perversion of law and power, for the dangerous purpose of removing a Judge, whose only offence we believe to be a scrupulous and conscientious discharge of his judicial duty.

The same power which authorized the removal of Mr. Justice Willis, supposing it to be lawful, and the appointment of Mr. Justice Hagerman in his place, might with greater facility have created a Chief Justice to organize the Court according to law. But we feel that the magnitude of the outrage itself against the justice of the Country is so great, as to forbid our descending to those particulars of which we can be only partially informed, from the policy of the local Administration in withholding from us that information which might more fully expose the enormity of the transaction. We humbly desire however to declare to Your Majesty, that had the Law not placed it in the power of the local Government to avert the evils, the apprehension of which they affect to have influenced their conduct, we would esteem those evils very subordinate to this intimidation of our Judges, by the cruel aspersion of the character and unjust ruin of the prospects of one of their number, by the bold and daring exercise of arbitrary power.

Although the defective constitution of the Court, and the consequent illegality of its proceedings, have been known to the Provincial Government since Trinity Term last, yet the administration of Justice has not been relieved from this serious embarrassment, by the due organization of that Court, nor has His Excellency been advised to bring this all-important state of the Country under the notice, or to recommend it to the consideration of the Provincial Legislature. We therefore cannot too earnestly express to Your Majesty our deep sense of the injustice, inexpediency and illegality of persisting in the maintenance of the present defective state of the Court; and to represent to Your Majesty the sacred duty which we feel to be imposed upon us, firmly to protect the interest of those suitors who have been prejudiced, either because they abstained from a Court which was violating Law, or because they were driven by their necessities to yield to this assumption of judicial power.

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In Michaelmas Term last, Mr. Justice Hagerman alone constituted our Court of Kings Bench, wherein he confirmed his own questioned judgment at the preceding Assizes, in a trial in which Mr. Justice Sherwood was interested ; the result of which trial involved a property of very great value, acquired through those extraordinary judicial proceedings in the case of Mr. Randal, whose injustice has long been un-availingly an object of legislative relief and public sympathy. It is from such proceedings, such Courts, and such Judges, that the people desire to be relieved.

We had hoped that the appointment of Judges from England would redeem the character of the Provincial Judiciary ; but that hope has been greatly impaired, by finding that such men have been esteemed by those in power too conscientious for Colonial rule. We feel that no gentleman of the English Bar, gifted with learning and character, will come to administer justice amongst us, if he is subject to an ignominious removal, and obliged to meet in England charges unknown to him, got up against him without regard to the laws of honour, or justice of the country.

We humbly express to Your Majesty our serious apprehension that the learned Judge who has thus far been a victim of Provincial persecution may be elevated to some higher place in Your Royal consideration, instead of being restored to his seat upon our Bench, as the most effectual method of wiping away the stain attempted to be affixed to his character, and of healing the wound inflicted upon the Justice and Constitution of the Country. His reinstatement in office as our Judge, is most desirable for the peace and happiness of the Province, and for the restoration of public confidence in the administration of the law.

In the name of equal justice, we further humbly pray Your Majesty to cause a strict inquiry to be made into the conduct of all persons directly and indirectly concerned in this overbearing and despotic proceeding ; and, as the only means of assuring our future security, to expose them to whatever punishment may be due to their respective crimes, as advisers, abettors, and approvers of the same.

Should Your Majesty be advised to disregard these our just and earnest prayers against grievances which have increased under the patience with which we have hitherto endured them, we shall be constrained to feel, that while we form a part of the British Empire, we are excluded from sharing its equal and exalted justice.

We again humbly pray Your Majesty to lay the whole Matter and Prayer of this Address before the British House of Commons, and to communicate to them our earnest hope that they will be pleased most favourably to regard our wishes, and promote by their wisdom and council the redress of our wrongs.

Commons House of Assembly, }
14th March 1829. }

(Signed) *Marshall S. Bidwell,*
Speaker.

— No. 2. —

Copy of an ADDRESS to HIS MAJESTY, from the House of Assembly
of *Upper Canada* ; dated 20 March 1828.

TO THE KING'S MOST EXCELLENT MAJESTY.

MOST GRACIOUS SOVEREIGN.

WE, Your Majesty's dutiful and loyal Subjects, the Commons of Upper Canada, in Provincial Parliament assembled, humbly beg leave to represent to Your Majesty, that we have seen, with equal surprise and regret, a Letter and Ecclesiastical Chart, dated 16th May 1827, and addressed by the Honourable and Venerable Doctor Strachan, Archdeacon of York, a Member of Your Majesty's Legislative and Executive Councils of this Province, to the Right honourable R. J. Wilmot Horton, at that time Under Secretary of State for the Colonies, for the information of Lord Goderich, then at the head of the Colonial Department, as they are inaccurate in some important respects, and are calculated to lead Your Majesty's Government into serious errors.

We beg leave to inform Your Majesty, that of Your Majesty's Subjects in this Province, only a small proportion are members of the Church of England ; that there is not any peculiar tendency to that Church among the people, and that

nothing could cause more alarm and grief in their minds, than the apprehension that there was a design on the part of Your Majesty's Government to establish, as a part of the State, one or more Church or denomination of Christians in this Province with rights and endowments not granted to Your Majesty's Subjects in general of other denominations, who are equally conscientious and deserving, and equally loyal and attached to Your Majesty's Royal Person and Government. In following honestly the dictates of their conscience as regards the great and important subject of Religion, the latter have never been conscious that they have violated any law or any obligation of a good Subject, or done any thing to forfeit Your Majesty's favour and protection, or to exclude themselves from a participation in the rights and privileges enjoyed by Your Majesty's other Subjects.

We humbly beg leave to assure Your Majesty that the insinuations, in the Letter, against the Methodist Preachers in this Province, do much injustice to a body of pious and deserving men, who justly enjoy the confidence and are the spiritual instructors of a large portion of Your Majesty's Subjects in this Province. We are convinced that the tendency of their influence and instruction is not hostile to our institutions, but, on the contrary, is eminently favourable to religion and morality; that their labours are calculated to make their people better men and better Subjects, and have already produced in this Province the happiest effects.

While we fully and gratefully appreciate Your Majesty's gracious intentions in granting a Royal Charter for the establishment of an University in this Province, we would beg most respectfully to represent, that, as the great body of Your Majesty's Subjects in this Province are not members of the Church of England, they have seen with grief that the Charter contains provisions which are calculated to render the institution subservient to the particular interests of that Church, and to exclude from its offices and honours all who do not belong to it. In consequence of these provisions, its benefits will be confined to a favoured few; while others of Your Majesty's subjects, far more numerous, and equally loyal and deserving of Your Majesty's paternal care and favour, will be shut out from a participation in them. Having a tendency to build up one particular Church to the prejudice of others, it will naturally be an object of jealousy and disgust. Its influence as a seminary of learning, will upon these accounts be limited and partial. We therefore humbly beg that Your Majesty will be pleased to listen to the wishes of Your Majesty's People in this respect, and to cause the present Charter to be cancelled, and one granted free from the objections to which, emboldened by a conviction of Your Majesty's paternal and gracious feelings to Your loyal Subjects in this Province, as well as by a sense of duty to the People, and a knowledge of their anxiety upon the subject, we have presumed to advert.

We would also beg leave to state, that it is the general desire of Your Majesty's Subjects in this Province that the Monies arising from the sale of any of the Lands set apart in this Province for the support and maintenance of a Protestant Clergy, should be entirely appropriated to purposes of education and internal improvement; we would most humbly represent, that to apply them to the benefit of one or two Christian denominations, to the exclusion of others, would be unjust as well as impolitic, and that it might perhaps be found impracticable to divide them among all. We have no reason to fear that the cause of Religion would suffer materially from not giving a public support to its Ministers, and from leaving them to be supported by the liberality of their people.

Many Works for the internal improvement of the Province, of great importance to its prosperity and to the ease and comfort of Your Majesty's subjects, are necessarily neglected for the want of money in the Provincial Treasury; for, although the Taxes are only of a trifling amount, yet, from the scarcity of money, and the want of even a tolerable price for the productions of their farms, they are paid with great difficulty by many of Your Majesty's people; it is impossible, therefore, to raise by taxation the means necessary to undertake and carry on these Works. It is also most desirable that a larger Sum than is at present at our disposal, should be employed to extend through the country the advantages of Education.

We therefore humbly pray, That the Monies arising from the sale of the Lands set apart in this Province for the support and maintenance of a Protestant Clergy, may be placed at the disposal of the Legislature of this Province, for the purposes we have mentioned.

(signed) *John Willson*, Speaker.

Commons House of Assembly,
20th March 1828.

— No. 3. —

Copy of RESOLUTIONS agreed to in the Tenth Provincial Parliament of
Upper Canada, by the House of Assembly, on the 13th January 1830.

THE first Resolution was then put, and carried *nem. con.* as follows :

Resolved, That the Christians of various denominations in this Province have already been deeply wounded in their feelings by false and calumniating misrepresentations, made for the purpose of establishing an exclusive and proselyting system, which it has hitherto been attempted to strengthen and extend by rendering subservient to it the patronage of the Executive Government, and the unjust appropriation of the extensive School Reserves for the support of an University, against the sectarian character of which this House can never cease solemnly to protest, as they already have done.

Present, Messrs, Baldwin, Blacklock, Brouse, Cawthra, Dalton, Dickson, Ewing, Fothergill, Fraser, Henderson, Hornor, Ketchum, Kilborn, Lefferty, Lockwood, Longley, Lyons, M'Call, Mackenzie, Malcolm, Perry, Peterson, Randal, George Rolph, Shaver, Smith, Terry, Wilkinson, James Wilson, and Woodruff.

The Second Resolution was then put, and carried *nem. con.* as follows :

Resolved, That there justly is in the minds of the people of this Province a strong and settled aversion to a dominant Church connected with the Government, and upheld by that Government in a claim to a monopoly of the Clergy Reserves, and to the enjoyment of peculiar privileges, to the exclusion and prejudice of various denominations of Christians in this Province.

Present, Messrs. Baldwin, Blacklock, Brouse, Cawthra, Dalton, Dickson, Ewing, Fothergill, Fraser, Henderson, Hornor, Ketchum, Kilborn, Lefferty, Lockwood, Longley, Lyons, M'Call, Mackenzie, Malcolm, Perry, Peterson, George Rolph, Shaver, Smith, Terry, Wilkinson, James Wilson, and Woodruff.

The Third Resolution was then read, as follows :

Resolved, That this House regard the assumption by the Executive Government to appoint a Chaplain for them of the Church of England, even without previous reference to them for the expression of their feelings and wishes on the subject, as part of a system conducive to the extension and perpetuation of this injurious and alarming policy.

In amendment, Mr. Dalton, seconded by Mr. Dickson, moves, that after the word "Resolved" the whole be expunged, and the following inserted, "That this House consider it an imperative duty to mark their strong disapprobation of the advice which has dictated to His Excellency the Lieutenant Governor to appoint them a Chaplain without previous reference to them for an expression of their feelings on the subject, and that the said appointment appears to be in furtherance of the exclusive policy so universally and justly decried."

Which was carried *nem. con.*

Present, Messrs. Baldwin, Blacklock, Brouse, Cawthra, Dalton, Dickson, Ewing, Fothergill, Fraser, Henderson, Hopkins, Hornor, Ketchum, Kilborn, Lefferty, Lockwood, Longley, Lyons, M'Call, Mackenzie, Malcolm, Perry, Peterson, Randal, George Rolph, Shaver, Smith, Terry, Wilkinson, James Wilson, and Woodruff.

The Fourth Resolution was then read, as follows :

Resolved, That this House considers it inexpedient to receive the Reverend Doctor Phillips as their Chaplain.

In amendment, Mr. Perry, seconded by Mr. Peterson, moves, that after the word "Resolved" all be expunged, and that the following be inserted, "That this House deem it inexpedient to receive as their Chaplain any one appointed by the Executive Government."

On which, House divided, and the Yeas and Nays were taken as follows :

Yeas, Messrs. Baldwin, Blacklock, Brouse, Cawthra, Dalton, Fraser, Henderson, Hopkins, Hornor, Ketchum, Kilborn, Lefferty, Lockwood, Longley, Lyons, M'Call, Mackenzie, Malcolm, Perry, Peterson, Randall, George Rolph, Shaver, Smith, Terry, Wilkinson, James Wilson, and Woodruff - - - 28.

Nays, Messrs. Dickson, Ewing, and Fothergill - - - 3.

The Question was carried in the Affirmative by a Majority of 25.

The Fifth Resolution was then read, as follows :

Resolved, That the Ministers of the different Christian Congregations in this Town be requested to officiate during the present Parliament, as Chaplains to the House of Assembly, under such an arrangement as may be made by the Speaker.

In amendment, Mr. Perry, seconded by Mr. Lyons, moves, that after the word "Resolved" all be expunged, and that the following be inserted in lieu thereof, "That the Ministers of the different Christian Congregations in this Town be requested to say prayers in the House of Assembly during the present Parliament, under such an arrangement as may be made by the Speaker."

Which was carried.

13 January 1830.

— No. 4. —

Upper Canada, York, 11th February 1832.

MY LORD,

I HAVE the honour to transmit to Your Lordship an Address to The King, from the Commons of Upper Canada, in Provincial Parliament assembled, in which they pray that His Majesty will be graciously pleased to recommend that the Clergy Reserves may be sold, and the proceeds arising from the sale of them may be placed under the direction of the Legislature, to be applied to the advancement of the purposes of Education.

I have, &c.

The Right Hon^{ble}
Lord Viscount Goderich, &c. &c. &c.

(signed) J. Colborne.

Copy of an ADDRESS to HIS MAJESTY, from the House of Assembly of
Upper Canada; dated 14th December 1831.

TO THE KING'S MOST EXCELLENT MAJESTY.

MOST GRACIOUS SOVEREIGN.

WE, Your Majesty's dutiful and loyal Subjects, the Commons of Upper Canada, in Provincial Parliament assembled, beg leave most humbly to submit to Your Majesty, that, by an Act of the Parliament of Great Britain, 31st Geo. III. one-seventh of the Lands of this Province was set apart for the support of a Protestant Clergy.

That under that Act, appropriations have from time to time been made, and which appropriations are in this Province known by the name of "the Clergy Reserves;" that these appropriations having been generally made in lots of two hundred Acres, throughout the several townships of this Province, the value of the same has been much enhanced by the settlement of the country, and principally from the improvement of the lands in the neighbourhood of such appropriations by the labour of the inhabitants composed of various denominations of Christians; that these Reserves, being so interspersed with the lands of actual settlers, have
materially

materially retarded the improvement of the Country; that by an Act passed in the reign of His late Most Gracious Majesty, provision was made for a sale of a portion of the said Reserves; that it is unjust as well as impolitic to appropriate the said Lands to the support of any one Church exclusively, and it is extremely difficult, if not altogether impracticable, to apportion or divide the same among the Clergy of all denominations of Protestants; that a large majority of the Inhabitants of this Province are sincerely attached to Your Majesty's Person and Government, but are averse to the establishment of any exclusive or dominant Church; that this House feels confident that to promote the prosperity of this portion of Your Majesty's dominions, and to satisfy the earnest desire of the People of this Province, Your Majesty will be graciously pleased to give the most favourable consideration to the wishes of Your faithful Subjects; that to terminate the jealousy and dissension which have hitherto existed on the subject of the said Reserves, to remove a barrier to the settlement of the Country, and to provide a fund available for the promotion of Education, it is extremely desirable that the said Lands, so reserved, be sold, and the proceeds arising from the sale of the same placed at the disposal of the Provincial Legislature, to be applied exclusively for that purpose. We therefore humbly pray that Your Majesty will be graciously pleased to recommend to Your Majesty's Parliament of Great Britain and Ireland to pass an Act to authorize the sale of the Clergy Reserves remaining unsold, and to enable the Legislature of this Province to appropriate the proceeds thereof in such manner as may be considered most expedient for the advancement of Education.

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

(signed) *Arch^d McLean,*
Speaker.

UPPER CANADA.

COPIES

OF

ADDRESSES to HIS MAJESTY from the House
of Assembly of *Upper Canada*, dated 20 March
1828, 14 March 1829, 13 January 1830, and
14 December 1831.

(*Mr. Hume.*)

Ordered, by The House of Commons, to be Printed,
16 August 1832.
