

# NOTICES

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IN ANSWER TO AN ARTICLE

PUBLISHED

IN MR. NEILSON'S QUEBEC GAZETTE

OF THE 28TH DECEMBER, 1826,

ENTITLED

“THE ENSUING SESSION OF THE PROVINCIAL PARLIAMENT OF LOWER-CANADA,”

RELATING TO THE EXISTING DIFFICULTIES IN THE PROVINCIAL LEGISLATURE  
ON FINANCIAL MATTERS, IN CONNEXION WITH THE SUPPORT OF THE CIVIL  
GOVERNMENT OF THE PROVINCE.

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**“ THE ENSUING SESSION OF THE PROVINCIAL PARLIAMENT OF LOWER CANADA.”**

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“ THE question still at issue, let it be stated in whatsoever form the ingenuity of the human mind can devise, is reducible to this : Shall the monies now paid, or which may hereafter be paid, by the inhabitants of this Province, in virtue of laws passed in the Parliament of the mother country, or in this colony, be disposed of without the consent of the representatives of the people, the Legislative Council and His Majesty, forming the established authority of the Province ?”

The (old) QUEBEC GAZETTE, 28th December, 1826.

It is very certain that this is not the question at issue, nor any thing like it. It is only one of those specious expositions in which the rank advocates of democracy—supreme, unqualified democracy—think proper to disguise that question. Nor is the question about this or that administration ;—nor about the “ *inherent rights*, (as understood in the article quoted) of *British subjects*.”

None of *their* rights are immediately in question or endangered, in the sense in which that article would have it : but they are indeed, nevertheless, deeply concerned in a sense very different from that in which the Gazette views them. Their right to the integrity of the Constitution,—their right to be governed by *three*,—and not by *one* branch of that Constitution,—their right that those powers and privileges, which, for *their* benefit, are vested in the other branches of the Constitution, not less valuable to Englishmen than those committed to the representative branch, shall also remain equally respected and inviolable,—their right to see, that under pretext of asserting rights in their name that are not at all at stake, the asserters themselves are not the aggressors, and actively engaged in despoiling them of others equally important to the well-being of the Constitution ;—these rights *are* in question, and deserve very serious attention.

The question, or rather the questions, for several are involved, relate in their immediate connexion to very different rights from those about which the (old) Quebec Gazette would take any interest in vindicating :—the rights of the King and Parliament of Great Britain,—the sovereignty of the British Government in this Province,—the right of His Majesty’s subjects, natives of the Province, and of Englishmen adopting this as their home, to look to that Government and Parliament, as the model and example of the Provincial Legislature, and to claim their protection against all attempts in any one branch of the Provincial Legislature to set at naught the rights or privileges of either of the other branches.

The question is not whether this or that administration shall be supported or opposed, as popular or unpopular ; but that very paramount one, whether *any Administration* of the British Government shall be sustained and

lawfully supported, unless it accede to such terms as the popular branch shall think proper to dictate—annually dictate—in the *application* as well of those monies already appropriated by Act of the British Parliament for the support of the Civil Government of the Province, as of those annually to be voted to supply for that purpose the deficiency required by the Government.

The question is also, whether the terms dictated and insisted upon, are consistent with the principles of the mixed Government under which we live :—whether by a compliance with them, the Government would not divest itself of that right by which it is sovereign, and governs permanently in the Province, and thereby staking its existence on the annual and precarious will of the people, become a Government on mere sufferance,—to be supported or cast off, just as it might suit the temper of the people, or the fancy of the times :—in a word, whether, in such a case, while we vainly imagined ourselves in the enjoyment of the advantages of a mixed constitution of government, consisting of three branches,—we should not be essentially a Republic, governed by *one* branch, enforcing republican maxims through the agency of two other branches submitting to its dictates :—in semblance, a mixed Government ;—in reality, a Republic.

There can be no question that the concurrence of the *three* branches is necessary to the appropriation of all *unappropriated* monies levied on the subject in this Province, whether by Act of the British Parliament or of the Provincial Legislature. The (Old) Quebec Gazette goes, however, a step further, and under the latitude of its position, implies, that *in practice* the consent of those three branches is also necessary, as well with respect to the monies that are already appropriated for the support of the Civil Government, (and as such, exclusively belonging to the King for that purpose) as with respect to the unappropriated monies : that is,—that the monies *appropriated*, no matter by what authority, (whether of the British Parliament or Provincial Legislature) towards the support of the Civil Government, cannot, nevertheless, be *applied* to that purpose without the special *direction* and *appointment* of the House of Assembly, whose pretensions, in the way the above question is stated, are not so *apparent* as their reality requires. If they really were as unpretending as they there lie modestly couched among the rights of the other branches, they would not be of any great moment.

The question at issue, however, is not whether the consent of the *three* branches be necessary to the *appropriation* or payment of monies levied in the Province, and at the disposal of the Legislature, for about this there can be no question :—But the question, which really is “ *still at issue, let it be stated in whatsoever form the human mind can devise, is reducible to this :—* Shall the fund already *appropriated* by Act of the British Parliament towards the support of the Civil Government of the Province, be now *disappropriated* by the *fiat* of *one* (the popular) branch of the Provincial Legislature, and the whole Civil Government thereby disorganized, to be again put together and upheld in such way as that branch shall dictate ? The question rather relates to the *repeal* of an Act which

has already made an appropriation, than to the enactment of a law to appropriate :— to the *undoing*, rather than the *doing* of a legislative Act.

While the “*inherent rights of British subjects*” are held up as the object in dispute, let us see whether such be really the case, and take care lest, while the asserters are preaching for rights, they are not themselves the most open and daring spoliators of them. The assertors of rights are not the most scrupulous in the world of committing wrongs,—atrocious wrongs,—when their interests or their passions are engaged. According to them, all is covered under the healing maxim of *un petit mal, pour un grand bien*. Let us keep in mind our *indubitable right* to the free and untroubled opinion of *three* branches of the Legislature to the *doing* or *undoing* of every legislative act or law ; and that every attempt in any of those branches to force its will upon the other, either in the enactment or repeal of a law, is a flagrant violation of *our* rights. That such an attempt, when it is made, is not the less odious because done under the specious plea of asserting the *inherent rights of British subjects*, nor the more excusable because done in *their* name.

Although the *question*, as laid down in the (Old) Quebec Gazette, is of great latitude, the whole article is pointedly levelled at the existing misunderstanding with respect to the expenditure for the support of the Civil Government of the Province, and the present article shall, therefore, also be confined to the same subject.

The public monies levied in this Province, consist principally of import duties, upon articles of trade imposed by Acts of the Imperial Parliament, and Acts of the Provincial Legislature. Some of these monies are appropriated. Others of them are unappropriated, and as such remain at the disposal of the Legislature.

The duties levied in the Province under one of the British Acts (14 Geo. III ch. 88) amount annually to about twenty-five thousand pounds sterling, of which one-fifth goes to the Government of Upper Canada. These constitute a fund, which is by that act *appropriated\** towards the support of

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\* The Assembly pretend that they do not question the *appropriation*, but insist that they have a right to *appoint* and *direct* the *distribution* of it, for the purposes of its appropriation, i.e., to *apply* the fund in such *items* to the several offices connected with the Administration of Justice and Civil Government, as they shall *annually* direct. They do not, however, satisfactorily account for the way in which this assumed right has been taken from the Lords of the Treasury, in whom, by the Act it is vested, to be given to the Assembly. The Act itself may be consulted to advantage, as to the right of *applying* the fund in question, for which purpose the following extract is given, viz :—

“ That all the monies that shall arise (except the necessary charges of raising, collecting, levying, recovering, answering, paying and accounting for the same) shall be paid by the Collector of His Majesty’s Customs into the hands of His Majesty’s Receiver General in the said Province for the time being, and shall be *applied* in the first place in making a more certain and adequate provision towards paying the expenses of the Administration of Justice and of the support of the Civil Government in the said Province ; and that the *Lord High Treasurer or Commissioners of His Majesty’s Treasury*, or any three or more of them for the time being, shall be and is or are hereby empowered from time to time by any warrant or warrants under his or their hand or hands to secure such money to be *applied* out of the said produce of the said duties, towards defraying the said expenses ; and that the residue of the said duties shall remain and be reserved in the hands of the said Receiver General for the future disposition of Parliament.”

the Civil Government of the Province of Quebec, now the Provinces of Upper and Lower Canada. There is also an appropriation of about five thousand pounds sterling, annually, towards defraying the Administration of Justice in this Province, by an Act of the Provincial Legislature (35 Geo. III ch. 9), which sum, with so much of the proceeds of the former Act as appertain to Lower Canada, amounting together to something like twenty-five thousand pounds sterling, constitute a *permanent* fund for the *permanent* support of the Civil Government of this Province.

The duties imposed by the British Act were *in lieu* of other pre-existing duties, which at the time of and previous to the conquest, were levied in the Colony and appertained to the French King. By that event and by treaty, they devolved upon the King of England, but were *discontinued* by the act mentioned, which imposed others (as they now exist) in their stead, establishing these as a fund, to defray the Administration of Justice, and for the support of the Civil Government in the Province.

Besides these, there are other monies levied in the Province, to a very considerable amount, as well under British as Colonial Acts, but being *unappropriated*, they of course remain at the disposal of the Provincial Legislature. With respect therefore, to them, there can be no doubt that they cannot, in the words of the (Old) Quebec Gazette, "*be disposed of without the consent of the Representatives of the people, the Legislative Council and His Majesty, forming the established legislative authority of the Province,*" nor has this doctrine ever been denied. But the dispute does not relate to these unappropriated monies. The pretensions, as already observed, go much farther. They go to *dispossess* the Government of the *appropriated fund*, which, although held by the King long before the present Constitution of the Province, is not now to be *applied* (if these pretensions are to prevail, and they are the pretensions of the Assembly *only*) without the consent of the *three* branches, although this doctrine is insisted upon but by *one* of them, the two others disavowing it.—Nay, further still,—the Assembly urging these pretensions, which the other *two* branches, as respects the fund in question, utterly disclaim and resist, contend that without *their authority and consent* any application of the monies of that fund is not constitutional—implying, by this subtilty, that the want of *their* authority and consent to a pre-existing law (the enactment of a higher authority) is of itself sufficient to suspend and repeal that law.

This fund consisting of duties *substituted* for others, to which the King had, in the opinion of Parliament, an undoubted right, the Government of the Province has hitherto *applied*, as far as it would annually go, for the purposes of its appropriation, that is to say, towards defraying the administration of Justice and the salaries of the Civil Officers. The Assembly have annually had a statement of the manner in which the fund has been applied, but the Government has according to Law (14 Geo. III. ch. 88,) uniformly denied that body all controul over the *application* of it, as not being of their gift or grant, but held independently of the Provincial Legislature.

The inadequacy of the fund, and the voluntary offer of the Assembly in 1810 to assume the charge of the Civil Government, induced the Government to call upon the Assembly in 1818 to this effect. The deficiency to be supplied by the Provincial Legislature, coming from the unappropriated monies of the Province, cannot be otherwise constitutionally obtained, than by the concurrence of the *three* branches, as these *are* funds over which they *have* an absolute controul, and which therefore, in the words of the text cannot be disposed of without the consent of the Representatives of the people, the Legislative Council and His Majesty, forming the established legislative authority of the Province.

Here however, two main difficulties have arisen. In the first instance, the Assembly will only vote the sum which they may deem necessary for the Civil List, *annually*; refusing to adopt the principle recognised, and acted upon in England, at the commencement of every reign, to fix the Civil List for the King's life. And in the second place, they will not vote any sum out of the *unappropriated* monies in aid of the *appropriated* fund, unless the *latter*, which is not of their gift, as well as the former which is to be of their gift, be *applied* as they think proper to *appoint* and *direct*.

With respect to the supply which might be given from the unappropriated funds, in aid of the appropriated fund, towards the support of the Civil Government, the general doctrine that the Commons may limit, appoint and direct their grant as they may think proper, is in some degree applicable. If however, the terms and conditions (under pretence of the *appointing* and *directing* right) on which the supply is offered, be such as the other branches cannot accede to, so much the worse,—the government must in that case do as it can. If the Commons will not give what does belong to them on what the other branches consider constitutional terms, it is withholding *their own*,—withholding it perhaps too tenaciously:—possibly at the risk of dissolving the Government,—but still it is *withholding their own* and nothing more.

But this is not all. As if it were not enough to withhold *their own*, except upon terms inadmissible by the other branches, they would *take away* from the Government that fund which belongs exclusively to it, inadequate as the fund is, towards its support, and for which it is in no wise beholden to the Provincial Legislature. In prosecution of this project, it is said, the *consent* of the *three* branches of the Provincial Legislature, is indispensable to the *application* of the appropriated fund. But in the usual course of legislation on money matters, before this consent of the other *two* branches is to be called for, the popular branch are to exercise their *previous* right of *directing*, *limiting* and *appointing* the several salaries payable out of this fund: and in the exercise of this directing, limiting, and appointing power, the right of *excluding* altogether certain offices of the Civil Government, (in existence years before the present constitution,) is assumed by the Assembly. It is to *this* power to be so exercised over this fund, that *consent* in the other branches is wanting. It is not because monies are applied *without* the consent of the *three* branches, but because monies over which the Assembly have no controul, being already appropria-

ted and applicable under an Act of the Imperial Parliament, *are applied* without *their* consent, which the previous appropriations have rendered unnecessary. The other branches will not *consent* to the dictate of the Assembly for *disappropriating* monies belonging to the King, under a pretended right in the latter to *apply* them, and this is what the Old Gazette calls a question about *disposing of monies without the consent of the established Legislature*, as if to *dispose* of their own and to *dispossess* the Crown of its monies, were not very distinct propositions.

They think proper to *deny* the right of the Government to apply its own fund to the purposes of its appropriation, and assume that right themselves. This right the two other branches in turn deny to be in *them* (the Assembly), and upon this denial by the *two* other branches, of such an assumption in the popular branch, the Old Gazette, with a hop, skip and jump peculiar to itself, leaps into, and intrenches itself behind the doctrine to which it has *reduced* the question, as if the doctrine would justify every excess attempted under colour of it.

It is because the *two other* branches of the Legislature refuse their assent to this measure for *dispossessing* the Crown of its hereditary revenue in the Province, by the Assembly, with a view to the *re-application* of it, according to the dictate of that body, diminishing some and *excluding* other salaries altogether, that we are told the question at issue is, as stated in the quotation at the head of this article. It is because the two other branches *refuse* their assent to *repeal* a law, by which the Crown has the entire and sole disposal of the fund in question, and to place that fund at the entire controul of the Assembly, that the question at issue is thus misrepresented in the Old Quebec Gazette. Some well meaning and otherwise well informed persons led astray by the light in which the question is put, and which taking for granted as properly put, warmly take up the doctrine laid down in it, as if it were denied in the abstract. They never dream that the doctrine promulgated, and the *practice* attempted to be introduced under cover of that doctrine, are at variance and repugnant;—that while they are told with much assurance, the question is *reducible* to this simple one “*shall the monies paid by the inhabitants of the Province be disposed of without the consent of the Representatives of the people, the Legislative Council and His Majesty, forming the established Legislature,*” it nevertheless essentially is a very different one, and that in preaching this, other very extraordinary and unconstitutional pretensions are on the part of the Assembly urged under pretext of this reasonable position.

They are not aware that the “*inherent rights of British subjects*” are but rallying words to mislead the unwary, and that not these rights, but the *rights of the King*, equally important to the peace, welfare and good Government of his subjects, as their own, are the real matter in contest:—they are not sensible that the question is not as pretended, about disposing of monies without the consent of the Legislature: but rather, to constrain *two* of its branches to co-operate with the *third* in *dispossessing* a rightful owner of his property;—less a question about *giving* to, than *taking from*;—not about the disposal of monies by a law to be



passed with *consent* of the *three* branches of the Legislature : but actually to take away monies already disposed of by law, and to abrogate that law by the sole *fiat* of *one* of those branches. While the *consent of the three branches* to the disposal of monies paid by the inhabitants, is held out as the point contended for, the struggle is for *dispossessing* by the dictate of *one* branch against the consent of the *two* others, the government of its *appropriated* monies. The *consent* here alluded to in the Old Gazette, is not so much that which is necessary to the making, as to the *breaking* of a law.

It is upon such a case, and with respect to matters so situated, that the Old Gazette, forsooth, raises and *reduces* the question quoted. May it not also be *reducible* to the following ?—Shall an Act of Parliament giving to His Majesty monies, over which the Parliament had an unquestionable controul, towards the support of His Civil Government, be abrogated by any thing short of the consent of the King, the Legislative Council, and the Representatives of the people, forming the Legislature of the Province ?

Who does not know that the consent of the three branches of the Legislature is as necessary to the repeal, as to the enactment of a law. ?

In the convenient *practice* to be introduced under this *reduced* doctrine, the usual constitutional courtesy, of addressing the King for the purpose of obtaining His Majesty's free consent for the reduction of such salaries or abolition of offices, as the popular branch may deem unnecessary, is entirely superceded, and His free will and judgment on the subject is to go for nothing, as if He had no such will or judgment to exercise in the matter. The *directing* and *appointing* power is every thing, and He must yield to that. His honor, and faith to old servants, (whose offices he might think proper to abolish upon an address, submitting reasons to that effect, for the royal consideration,) and their claim for some remuneration in the way of a pension, or otherwise, are to be of no account, as if no such faith and honour existed, or if existing, not to be respected by the popular branch. Instead of upholding that consideration, to which as one branch of the constitution and the head of the Executive Government, the King is entitled, and for the good of his subjects even bound to sustain, He is to wave all pretensions to an opinion of his own, as if in such matters none he were entitled to,—cease to be a free agent, nor have even a *veto* in legislation, when the *directing* and *appointing* power were in array and went abroad against him.

The writer in the Old Gazette appeals to the practice of the other Colonies. He ought in this respect to have been a little more explicit, and to have given a few instances. There is reason to believe that no practice in any of them (with respect to monies so appropriated, and similarly situated as the fund in question,) would bear him out in the *dispossessing practice* he alludes to, as attempted to be introduced under the *directing* and *appointing* system.

Upper Canada participates in this very same fund in question, yet we have never understood that the *directing* and *appointing* power prevailed there, with respect to its *application*. The *practice* in that Province, in a case precisely similar to our own is directly against the Old Gazette :—I.

not, let the proof be brought forward. In that Province there is cause to believe that the *Crown Fund*, as it is there called, consisting in part of these very monies levied in Lower Canada, and appropriated under the 14th Geo. III, ch. 88, is subject to *any* order of His Majesty's Government, and this to the entire exclusion of the Assembly. The casual and territorial revenue in that Province, corresponding to the revenue under the same designation in this Province is held to be in no way under the controul of the Provincial Legislature, and no account of it has hitherto been rendered to that Body except by Special Permission on a recent occasion, which therefore is no precedent. Are the *people* of Upper Canada less sensible of their "*uncontrovertible*" rights, or less disposed to assert and vindicate them, if in *question* in this matter, than the people of Lower Canada? There is cause to believe, that in Nova-Scotia, the Assembly distinctly admit all monies raised in the Province, by Act of the British Parliament, antecedent to that of the 18 Geo. III, ch. 12, to be beyond their controul, and as such, not subject to be appropriated by the Provincial Legislature.\* The case is of course different with respect to monies levied there by Acts of the British Parliament, subsequent to that date.

It has been seen, in the preceding part, that the real question is not about the concurrence of the three branches of the Legislature to an act of appropriation, for *disposing* of monies levied on the people of the Province, but rather about *disappropriating* and *dispossessing the King* of a fund lawfully appertaining to him:—that it is not so much a struggle about the manner in which a supply is to be given to the King, in aid of the fund appropriated towards the support of his Civil Government in the Province, as about the most effectual means of *taking away* the inefficient fund He already possesses for that purpose;—that it is not so much to enable the Government to be constitutionally *carried on*, as totally to *paralyze* it, to the end that it may be again put in motion at the *fiat* of the Assembly, under the *directing* and *appointing* system.—That the matter, as stated in the Old Gazette, is not in fact the question, but the question in disguise.

The Assembly insist that *they* shall *appoint* and *direct* the *application* of the fund appropriated and belonging to His Majesty for the support of his Civil Government of the Province; but from this assumption, tending to *dispossess* the King of a revenue he holds independently of the Legislature of the Province, the *two* other branches formally dissent. It is this *dissent* from such an assumption in *one* branch to *disappropriate* the fund alluded to, and *apply* it as they please, that gives rise to this sophisticated misapplication of the query brought forward, to wit, "*shall the monies paid by the inhabitants of the Province be disposed of without the consent of the established Legislature?*"—which in point of fact is not the question. The question is not one of *disposing* of monies by *appropriation*, but one of *spoliation*.

The reader, it is hoped, distinctly sees the difference between the doctrine held out as the matter in dispute, and the point really in question, as attempted to be practically carried into effect under colour of it;—that the

\* See note (A) at the end.

doctrine by no means justifies the *practice* aimed at ;—and that when the Old Gazette speaks of “*the practice of the Colonies*,” it cannot be such a practice as the one intended here under the pretended directing and appointing right and power of the Assembly over the appropriated monies.

It was for the Gazette making the assertion, to have shewn instances of such a *practice* in any of the Colonies, as that contended for in this Province, with respect to *appropriated* monies. In the total absence of proof, its *ipse dixit* must go for little or nothing on this, as well as on some other points.

On the contrary, it is probable that it would not require very great time and research to give instances, of monies levied in the Colonies, and appropriated by Act of the British Parliament, that have been for years (perhaps a hundred or upwards), and to this very day are applied by the Executive Government of the Colony where levied, without the intervention of the Assembly or colonial Legislature in any shape. Possibly an instance of the kind may be found even in *Jamaica*, to which the advocates of the *directing* and *appointing* system turn with great complacency for precedents.

The Assembly of Upper Canada (the Government whereof, as already observed, participates in the fund in question) are content with exercising their *directing* and *appointing* right over the supply they give *in aid* of this fund ; but over the fund itself they have never assumed, nor attempted to assume the least controul. Whether it is that the people of the Upper Province understand their rights and privileges in the Constitution less than, or as well as, the people of this Province ; or that the people of this Province are by peculiar privilege and favour entitled to the exercise of greater powers in the Constitution than they, casuists may determine, if there remain a doubt on the subject.

It may be interesting to trace the rise and progress of the *directing* and *appointing* doctrine as understood with respect to its application to the appropriated fund ; for it did not, like Minerva from the brain of Jupiter, leap into its present perfect shape. Other anomalies that have arisen on the Civil List are also worthy of notice, in order that the reader may see on which side the misunderstanding (if it can properly be palliated by that name) exists.

The Governor in Chief, Sir John Sherbrooke, in his speech, on opening the Session of the Legislature in 1818, said with respect to this matter, “I have received the commands of His Royal Highness the Prince Regent, to call upon the Provincial Legislature to vote the sums necessary for the ordinary annual expenditure of the Province.” He also added, that in pursuance of these directions, which he had received from His Majesty’s Government, he should order to be laid before the Assembly an estimate of the sums which would be required to defray the expences of the Civil Government of the Province during the year 1818, “and,” said he—emphatically addressing himself to the Assembly,—“I desire you, in His Majesty’s name to provide in a constitutional manner the supplies which will be necessary for this purpose.”

By this speech then, he acquainted the Legislature that he was commanded to call upon them "to vote the sums necessary for the *ordinary annual expenditure* of the Province," which he desired the Assembly to provide for "*in a constitutional manner.*" What was the manifest meaning of these latter words?—Clearly it was, that *manner* which *by the practice* of the mother country, had been established as the *constitutional manner*:—That constitutional manner by which at the commencement of every reign (since the Revolution,) the *ordinary annual expenditure* of the Civil List is, *once for all*, fixed, and limited for the King's life. It is not *annually* to be provided during the King's reign;—but the *annual expenditure* is at the beginning of each reign to be provided for, fixed and limited, once for all, during the whole reign. This is what the Governor must have understood :—the constitutional practice of the British Parliament.

These words of the then Governor in Chief have subsequently been inverted, and woefully perverted from their plain manifest sense and meaning, to suit the doctrine since set up and insisted upon by the Assembly with respect to the Civil List. But to return,

The estimate for 1818, as laid before the Assembly to guide them in their vote for the supply in aid of the fund already at the disposal of the Government, amounted in all to £73,646 8. 9, currency, to meet which, the Government estimated the probable amount of its appropriated fund for the year, at £33383 currency, leaving a balance to be provided for, of £40263 8s. 9d. currency, out of the unappropriated funds at the disposal of the Legislature.

Much time was expended in debate on this matter, but the Assembly, finally concluded by an address "representing to His Excellency, that the "House having taken into consideration His Excellency's recommendation "on the subject of the expences of the Civil Government of this Province, "for the year 1818, have voted a sum not exceeding £40263 8, 9, currency, towards defraying the expences of the Civil Government of this "Province, for the year 1818, exclusive of the sums already appropriated "by Law; but that the peculiar circumstances which have prevented the "House from receiving at an earlier moment the estimate of the Civil List, "Revenue and Public Accounts; and the advanced state of the Session, "not admitting the passing of a Bill of appropriation for the purpose, they "pray His Excellency will be pleased to order that the said sum, not exceeding £40263 8 9, currency, be taken out of the unappropriated "monies which now are, or hereafter may be in the hands of the Receiver "General of this Province, for the purposes aforesaid; and assuring His "Excellency, that this House will make good the same at the next Session "of the Provincial Parliament."

By this vote no assumption was pretended. The manner in which the Civil List should be provided for, whether *annually*, by a vote for that purpose, or "*in the constitutional manner*" of voting, once for all, "the sums necessary for the ordinary annual expenditure of the Province," as expressed by the Governor's speech, was indeed undetermined, and open

for further consideration : but there was no expression of the House indicating an intention of deviating from the "Constitutional Manner" as practised in the mother country. The "peculiar circumstances" alone prevented the Assembly in that Session from providing for the Civil List, (which in 1810 they had spontaneously offered to assume) "*in the constitutional manner.*" The *directing* and *appointing* right had not yet come into play, with respect even to the unappropriated monies, much less the *dispossessing* pretensions with respect to the *appropriated* fund, and the pretended right of *directing* and *appointing* its application to the Civil List. No such things were yet thought of seriously. Forty thousand and some odd pounds were asked for by the Government, and forty thousand and some odd pounds were accordingly granted it, by the Assembly, without any other limitation than that it should not exceed £40,263, 8s. 9d. currency, nor other *direction* or *appointment* than that it should go "*towards defraying the expenses of the Civil Government of this Province for 1818, EXCLUSIVE OF THE SUMS ALREADY APPROPRIATED BY LAW.*" Up to this period, then, the *sums already appropriated by law* were inviolably respected.

In the following Session of the Legislature (1819) this sum, which had been, in consequence of the Address of the Assembly, advanced and taken from the *unappropriated* monies in the hands of the Receiver General, and paid "*towards defraying the expenses of the Civil Government of the Province for the year 1818, OVER AND ABOVE THE SUMS ALREADY APPROPRIATED BY LAW FOR THAT PURPOSE,*" was made good by an Act passed in this behalf, without any reference in the Act (and indeed without any debate in either House) as to the precise application which had been made of the amount taken and paid on that vote, nor question about any direction or appointment prefixed to that aid.

It is also worthy of remark, that the sum mentioned, given as a supply in aid of the unappropriated fund, was by this Act "directed to be charged "against the unappropriated monies in the hands of the Receiver General "of this Province, which may have been raised, levied, and collected UNDER AND BY VIRTUE OF ANY ACT OR ACTS OF THE LEGISLATURE OF THIS "PROVINCE;"—so cautious were the Legislature hitherto, of abstaining from all interference with any monies levied under authority of Acts of the Imperial Parliament, or by any other authority than *their own*.

With this Session (1819) however, the difficulties sprung up which since have continued to agitate the Legislature. The Assembly passed a Bill, specifying every item or salary attached to each office for the year, not omitting the smallest of them, as well as the contingencies to each. It was pretended that this was the "constitutional manner" of providing for the ordinary annual expenditure of the Civil List in this Province, no matter how it might be done in England, or in other British Colonies ; but it was urged, nevertheless, that the course now adopted was analogous to and accordant with the "practice" of the other colonies in the like case.

This was the beginning of the *directing* and *appointing* doctrine. But it did not in this Session extend to the dispossessing perfection to which it has since been carried. The appropriated fund under the 14th Geo. III. ch.

88; was not immediately attempted to be directed or appointed in its application; nor was the supply in aid of it to be given out of the unappropriated monies. All mention of both these funds, and any distinction between appropriated and unappropriated monies was studiously avoided, that the controul of both might be encompassed by general terms. Accordingly, the Bill which the Assembly passed on the occasion, provided generally, "*that out of the PUBLIC MONIES which now are or that hereafter shall come into the hands of the Receiver General of this Province, the following sums of money shall be appropriated, and shall be respectively paid, to defray the expenses of the Civil Government of this Province, and the salaries of the several officers hereinafter mentioned, from the 1st day of November, 1818, until the 31st day of October, 1819, inclusively.*" The retrenching and excluding power was, however, exercised in the omission of certain offices, which, (no mention of them being made in the Bill,) were therefore to be considered as extinguished on this account.

Under the general and comprehensive denomination of PUBLIC MONIES, the appropriated fund was understood to be included, and as such, (although not in express terms,) to be limited, directed, and appointed in its application, among the offices recited in the Bill. Appropriations which the Provincial Legislature had formerly made, were treated less scrupulously, as being a less delicate matter than interfering boldly with an appropriation by Act of the Imperial Parliament, and in the directing and appointing assumption, they were to make part of the PUBLIC MONIES now to be applied under the Bill. For instance, the five thousand pounds sterling, permanently appropriated by the Provincial Statute of 35 Geo. 3, ch. 9, towards defraying the expenses of the Administration of Justice and the support of the Civil Government, were specifically included, and to make part of the monies appropriated for the year, under the denomination of PUBLIC MONIES, as also the monies levied for the current year, under the 45th Geo. 3, ch. 12, and 51 Geo. 3, ch. 12, and by those acts appropriated for the contingent expenses of the Trinity House, and payment of salaries to the officers belonging to it.

The Législative Council rejected this Bill as unconstitutional, and at variance with the usage followed in the mother country in similar cases.

The Session of 1820 went over without the transaction of any public business, the Assembly having declared itself incompetent to act, owing to the want of the return of a Representative for Gaspé.

But the question which at this stage principally agitated the Legislature, was, whether the Civil expenditure should be permanently or temporarily provided for; the directing and appointing matter not yet being at maturity, nor the appropriated fund attacked in direct terms, was to the present time comparatively a subject of minor importance. This was the grand question upon which public opinion was at work, and undecided.

Accordingly, at the opening of the first Session of the New Provincial Parliament, on the King's accession to the throne, in December. 1820, the

Governor in Chief, (Lord Dalhousie,) in his speech, observed in respect to this subject—

“ Gentlemen of the House of Assembly,

“ I have given orders that accounts of the General Expenditure in the Administration of the Government, during the last two years, and of the Revenue collected, shall be laid before you in the usual way.

“ I shall also lay before you accounts of the expense annually incurred, in payment of the Salaries and Contingencies of the Civil Officers, permanently established for the service and support of His Majesty’s Government in this Province, including such occasional payments as are unavoidable under it, (Charge £45,000.) To that I shall add a statement of the annual product of the permanent taxes and hereditary territorial Revenues of the Crown. (Revenue, £23,000.)

“ From these documents, formed upon an average of the last six years, you will perceive that the annual permanent revenue is not equal to the amount of the annual permanent charge upon the Provincial Civil List, by a deficiency of £22,000; and I have it in command from His Majesty to say, that His Majesty having from past experience the fullest confidence in your loyalty, sense of duty, and attachment to the principles of the Constitution, does not doubt that you will make a proper and permanent provision to supply that deficiency, and thereby enable him to sustain the Civil Government of this Province with honour and with advantage to his subjects.”

In answer to this, the Assembly observed;—

“ We should, however, hold ourselves to be wanting in that sincerity which is due to the frankness of your Excellency’s character—in that duty and respect which we owe to our Sovereign, by whose command your Excellency has submitted the proposal of an additional and permanent appropriation, which, with that already made, would exceed half the usual amount of the whole Provincial Revenue—were we not, even in this early stage of the proceeding, most humbly to represent that the declared sense of our Constituents, the duty which we owe to our posterity and to that Constitution of Government which the wisdom and beneficence of the Mother-Country has conferred upon this Province, together with the variable and uncertain future amount of that revenue, which, as well as our resources, depend on a trade at this moment peculiarly uncertain, will preclude us from making any other than an *annual appropriation* for the general expenditure of the Province, conformably to the recommendations of His Majesty’s Government, as signified to the Parliament of this Province by His Excellency Sir J. C. Sherbrooke, late Governor in Chief, in his speech delivered from the throne, at the opening of the Session on the 7th January, 1818.”

This is the germ of that palpable misinterpretation which has been put on the call by Sir John Sherbrooke, upon the Assembly to provide for the Civil List, boldly held forth with a sophistry that is not to be surpassed.

Sir John Sherbrooke, as already noticed, called upon “ the Provincial Legislature to vote the sum necessary for the *ordinary annual expenditure*

of the Province," and he also desired the "House of Assembly," in His Majesty's name, to provide in a *constitutional manner* the supplies necessary for this purpose." Here the Assembly however represent him as having asked for an *annual appropriation*, for the general expenditure of the Province, and refuse to make any other, as if that had been really his request. But the propositions are very distinct. Sir John Sherbrooke asked them to vote the *ordinary annual* expenditure, and to place his meaning beyond all doubt, he "desired" that it might be done in a *constitutional way*, i. e.—once for all to vote and fix during the King's reign the ordinary annual expenditure of the Civil List, according to the constitutional practice of the British Parliament in the like case. This the Assembly after a lapse of two years now (1820) misinterpreted, pretending that His Excellency only intended them to *vote annually* all the necessary expenses of the Civil Government, and they therefore said in the said Address, "We pray that your Excellency will accept our humble assurance of the unalterable disposition of this House to *vote annually* in a constitutional manner, according to that recommendation and to the Solemn Offer of the Assembly in the year 1810, all the necessary expenses of His Majesty's Civil Government in this Colony; in the honorable and permanent support of which, none are more deeply and sincerely interested than His Majesty's loyal subjects whom we have the honour to represent, or more anxious to merit the continuance of the confidence which His Majesty is graciously pleased to express of our loyalty and duty"—strong reasons truly!!—The deep and sincere interest felt for the *honorable* and *permanent* support of His Majesty's Government is made the motive for this *constitutional manner* of voting *annually* all the necessary expenses of the Civil Government in the Colony!!!

Is there an instance on record, in the history of any nation, in which *all* the necessary expenses of its annual Government is left to the risk of an *annual vote*? There is none, even amongst the most republican. It is a power of self-dissolution, which no people, Legislature or Government ever did or can trust itself or any of its component institutions *annually* with, for it would be annually to endanger its own existence. Do the United States furnish an example of the kind? The expenditure of their Civil Government essentially republican as it is, is on a footing which none of the constituent branches of its constitution can shake without the concurrence of the others. Whatever other points may agitate the body politic occasionally, all concur that the ordinary operations of Government must go on independently of them, and that these shall not be left to the chance of being suspended by annual misunderstandings with any branch of the Legislature, on any contingency however important. But here such doctrine is held up as preposterous—the *people* is every thing and all things must yield to the people and their representatives, as if the *Government* had no other rights in the Colony than such as the *people* or their representatives might think proper to allow them in it. Yielding to them, to use an unassuming phrase, recently set up, is only to "*go along* with the community in its pursuit of its own prosperity:"—the people of course are not to turn out



of their way and go along with the Government, for *It is nothing in the Province but what the people may choose to let it be !!!*

The same effort at perversion of meaning and consequently self-delusion runs throughout all subsequent proceedings of the Assembly on the words above adverted to, whenever the subject has been discussed by that body. For instance, in the Session of 1824.

“Resolved, that it is the opinion of this Committee, that in 1818, the Governor in Chief, Sir John Coape Sherbrooke, desired on the part of His Royal Highness at the time, now our Most Gracious Sovereign, in the King's name, the Assembly of this Province to provide for the civil expenses of Government, and to vote for that purpose the appropriations necessary for the said year 1818.”

Now Sir John Sherbrooke did not “in the King's name” desire the Assembly “to provide for the Civil expenses of Government, and to vote for that purpose the appropriations necessary for the said year.”—He did no such thing :—but he called, in that name, upon the Provincial Legislature as above observed “to vote the sums necessary for the *ordinary annual expenditure of the Province.*” He said he would order the estimate for 1818 to be laid before the House, and immediately after this it was, that he desired them in His Majesty's name to provide in a *constitutional manner* the supplies necessary for the purpose. It is thus by suppressing, misinterpreting, mutilating, and holding up official language and official documents to the whole Province, half-giving and half-concealing the truth, which it is important the public should see in every point of view, that the public are hoodwinked and deceived in the matter in question.

It is nevertheless but too true, that it has been upon *Ex parte* expositions of the subject so qualified and disguised, that the people (always right in their feelings, though liable to and often misled by false signs) have been called upon to judge of it. And it is upon judgments pronounced with such a knowledge of the cause, that the old Quebec Gazette exultingly exclaims, “the whole body of the people at three general elections have solemnly confirmed the decisions of their representatives.” The people never have pronounced an opinion on the subject, for it never has been fairly & impartially brought before them, in a way to enable them to comprehend it; and from the general want of education prevalent throughout the country parishes, it will be extremely difficult to put them in possession of the true question, which must be the work of time. In the mean time, their opinion, if opinion it can be called, will be forestalled and governed by those, in whom, from their own inability to form a proper judgment on the subject, they must necessarily rely. They will be liable to be impelled hither and thither, as the views of those possessed of their confidence may suggest; and that confidence will be liable to abuse until the body of the people shall have acquired a sufficient fund of information to think and reason for themselves in the matters in question. Propagate among them a belief that the Government is for taxing, levying money upon them, and misapplying that money for various purposes *unconstitutionally*, and that their representatives are merely contending to prevent this great

evil, and you naturally excite a sentiment that revolts at the seeming injustice, for although they are not sufficiently instructed in public matters to detect the *falsehood*, the value of money they well know and feel. But ask them on the other hand, whether they are ready to become voluntary and active instruments by which their *King* may be dispossessed of *His* rights;—enable the yeoman clearly to understand that this is the point—that it is not about *his own* rights, which are not in question, but for the violation of the *King's rights*;—that he is not called upon to *resist* a wrong but to *perpetrate* a wrong;—and depend upon it the Canadian *habitant*, in the honesty of his heart will not balance a moment on the subject.

But to pursue the progress of the *directing* and *appointing* pretensions. The Bill passed in the Session of 1820-1, by the Assembly, although it differed in form from that of 1819, was something more distinct and to the *purpose* than it. The specific items were omitted, and the offices were classed into chapters or heads, according, or nearly so, to the estimate sent down, and a round sum assigned to each chapter; omitting always, however, in the amount total fixed to each chapter, the sums appertaining to those offices which were to be *excluded* from the Civil List. This was not very satisfactory to some, who were for doing matters in a plain open way, so that the full intent of the Assembly might be apparent upon the face of their Bill, leaving no doubt of the intent of *excluding* this, that and the other office, which it might be determined not to provide for, as an unnecessary public charge.

This was met by another new doctrine which now started up. It was pretended that the *intention* of the House in voting monies, whether expressed or not in the Bill of Appropriation, constituted of itself a *Law binding upon the Executive*, which, constitutionally speaking, was bound to consult the Journals of the House, in order that it might there ascertain the spirit and motives of that body, and be guided in the *application* of the monies according to the *items* on the Journals, as those for which only the House, in the exercise of its *directing* and *appointing* pretensions intended to provide;—that the monies *appointed* to be paid, could constitutionally be paid for, and on account of the salaries only of those offices mentioned in the Journals;—and that such as were not there mentioned, of course were not to be paid out of the appointed monies. Some doubted the orthodoxy of this; but no matter—it was plausible enough;—it might not be, strictly speaking, a law of the land; but then it was an implied law between the GIVER and RECEIVER, the two parties more immediately concerned. It was constitutional:—at all events, if it were not, it was time to make it so, and to make it so, all that was needful was to insist upon it, as upon other points in connexion with the matter equally consistent with it.

The whole sum voted for the year was fixed at £44,060 10s. 2d. sterling; and now, for the first time, the *directing* and *appointing* pretensions were brought home to, and in full bearing against the *appropriated* funds, for the support of the Civil Government of the Province. The opinion of the *people* had not, until the present moment, come to a point, as to the *constitutionality* of a bold and decisive attempt, by Bill, to dispos-

sess the Government of the appropriated monies; for which purpose the following clauses were inserted and made part of the Bill.

"That out of the monies raised, levied, and collected in this Province, that now are, or that hereafter may come into the hands of the Receiver General for the time being, the following sums shall, by warrant or warrants, &c. be appropriated and paid for and towards defraying the expenses of the Civil Government of this Province, from the 1st November last (1820), to the 31st day of October next (1821), both days inclusive."

Here the "*monies raised, levied, and collected in the Province*" without distinction are all included. The word "*appropriated*" might, however, after all, leave a doubt if any thing more than the *unappropriated* monies were intended, and lest any such doubt might remain, the ensuing clause, by way of an explanatory proviso, was introduced.

"Provided always, and be it further enacted by the authority aforesaid, that the monies *by law heretofore appropriated for the support of the Civil Government of the Province*, which now are, or that hereafter shall come into the hands of the Receiver General of this Province, shall be applied in part payment for the purposes of this Act, and the remainder shall be made up and be taken from and out of any unappropriated monies which now are, or that may hereafter come into the hands of the Receiver-General of the Province for the time being; provided always that such of the above monies as shall remain unexpended in the hands of the Receiver-General of the Province shall be and remain at the future disposition of the Legislature."

The Legislative Council rejected this Bill as unconstitutional, as it did that of 1819.

The Governor in Chief, on opening the ensuing Session (December 1821,) gave the Assembly more fully than ever the sense of His Majesty with respect to the manner in which the Civil List ought to be provided for.

"I have ordered that the estimate for the ensuing year should also be laid before you without delay, and I have it again in command from His Majesty to acquaint you, that His Majesty still has the fullest confidence in your loyalty and affection towards his person and government; that he rests assured of your disposition to provide for the necessary expenses of the Civil Government, and those also equally necessary for the honour of his Crown. I am further commanded by His Majesty to recommend that such provision as shall appear necessary for these purposes should be granted permanently during His Majesty's life."

"It has been established in the British Parliament as a principle of the Constitution, that the Civil List should be granted during the life of the King, and I am commanded to impress upon you on this occasion His Majesty's recommendation that such principle of the constitution should be adopted and observed in future as the practice in this Province."

A more clear enunciation of principles and of the views of the King on the subject, language cannot convey. The Assembly scarcely expected it in so distinct a shape, and said nothing in their Address in answer to the

Speech, about *annually appropriating* any public monies for the purpose. They offered their "assurances that His Majesty might always place the fullest reliance in the invariable disposition of the House to provide for the necessary expenses of His Civil Government and those also necessary to the honour of his Crown." They also added to the above the following. "We receive with all due humility the communication of His Majesty's present recommendation, that such provision, as shall appear necessary for those purposes should be granted permanently during His Majesty's life, as well as the information that it has been established in the Imperial Parliament that the Civil List should be granted during the life of the King, and the recommendation which your Excellency is commanded to impress upon our minds, that such principle of the British constitution should be adopted and observed in this Province. We are fully thankful for the confidence which your Excellency is pleased to repose in our well known loyalty and attachment to the principles of the British Constitution, and we most respectfully assure your Excellency that in the conscientious discharge of our duty to our constituents under the act of the British Parliament in virtue of which we are constituted and assembled, the recommendation of His Majesty will at all times have weight with us."—Thus said the Commons. What they meant must be collected from their subsequent acts. It is however, worthy of remark that they were on this occasion totally silent on the sense into which Sir John Sherbrooke's call on the Legislature for the "*ordinary annual expenditure of the Province*" had been perverted, of a call *annually* to vote all the necessary expenses of the Civil Government of the Province.

No money was this Session voted for the purpose of the Civil List, the Assembly having instead of that addressed the King on the subject, offering for the royal consideration reasons against the adoption of the practice of the British Parliament in this respect, by the Provincial Legislature. A series of resolutions passed the House explanatory of its views of the *non-parity* between matters in the Province and those of the mother country, relatively to the Civil List, rendering it unnecessary in the opinion of the Assembly, to provide for the Civil List here, during the King's life.

It would not do however to relinquish the favourite self-delusion, that the Governors, (Sir John Sherbrooke and the Duke of Richmond) in 1818 and 1819, in calling upon the Province for the civil expenditure fully intended that the Assembly should vote and appropriate it *annually* and not otherwise. This notion was accordingly refreshed by a new resolution, and these with the whole string of *non-parity* resolutions with which they were coupled, were fortified under the very argumentative and conclusive one, that the "*House can only, and ought to provide for the expenses of His Majesty's Civil Government, annually and not otherwise.*"

The resolutions last alluded to, stand thus on the Journals of the Assembly.

"RESOLVED, that it is the opinion of this Committee, that in the situation in which the Province is, this House can only, and ought to provide

“ for the expenses of His Majesty’s Civil Government annually and not otherwise.”

“ RESOLVED, that it is the opinion of this Committee that according to the offer of the Assembly of this Province made in the year 1810, and accepted by His Majesty in 1818, and to the terms of the speeches of the Governors of this Province at the opening of the Session of the Provincial Legislature in the year 1818 and 1819, the sums necessary for the support of His Majesty’s Civil Government in this Province ought to be voted and appropriated annually and not otherwise.”

No appropriation being made by the Assembly this Session (1821-2) principally for the reasons stated, the *directing* and *appointing* power was at rest for the present, and as it is chiefly to its progress that the reader’s attention is directed, we shall therefore return to it.

But although this assumption was not in positive action during the Session, its retrospective influence was not overlooked. The rejection of the appropriation Bills mentioned, had placed the Executive Government under the necessity of advancing the monies necessary for carrying on the public service, from the Chest on its own responsibility. In reference to this it was resolved by the Assembly.—“ That this House will hold personally responsible His Majesty’s Receiver General of this Province and every person or persons for all monies levied on His Majesty’s subjects in this Province which may have legally come into his or their hands, and been paid over by him or them under any authority whatsoever, unless such payments be or should be authorized by an express provision of law.”

This resolution embraced indiscriminately “ *all monies levied on His Majesty’s subjects in this Province,*” without distinction between *appropriated* and *unappropriated*, and the threat therefore of “ *holding personally responsible His Majesty’s Receiver General, and every other person or persons concerned*” was very comprehensive not to say more of it. To be sure the last words “ *unless such payments be, or should be authorized by an express provision of Law*” were a kind of salvo,—but still that *express provision of Law*, must in their sense be and was intended to be understood an *Act of the Provincial Legislature*, as without this, that is, without the *consent and authority* (as more distinctly announced in the progress and promulgation of the doctrine at a subsequent period) of the Representatives of the people, no monies levied in the Province can be *applied* even for the purposes to which they may have been previously appropriated.

As an apology for not voting even the *annual* supply for the year (1822) the Assembly addressed the Governor, stating in substance that the proceedings of the Legislative Council (which had at the previous session adopted certain standing rules, by which they determined not to discuss any Bill from the Assembly providing for the Civil List, unless the provision were for the King’s life) having violated their rights, they were prevented from voting the necessary aid. They concluded by “ assuring His Excellency that this House as soon as it shall have been left in the full enjoyment of its rights and privileges, and His Excellency shall have commu-

“ nicated to this House His Majesty’s gracious acceptance of the renewed  
 “ offer of this House to vote *annually* the expenses of His Civil Govern-  
 “ ment in this Province, will not fail in the faithful discharge of its  
 “ obligations.

The determination of the Assembly to appropriate annually, and not otherwise, for the support of the Civil Government, and its pretensions to *apply* the appropriated fund, with a view of *dispossessing* the Government of it, and thus, under the directing and appointing power, to retrench and *exclude* at pleasure the public offices, without consulting the King, probably induced the Executive to introduce the distinction between the *permanent* and *local* establishments.

Having in the appropriated revenue above-mentioned, a permanent, though inadequate fund, towards defraying the administration of Justice and support of the Civil Government, it became, under the existing circumstances, necessary to determine which were the permanent establishments appertaining to the Administration of Justice and to the Civil Government, that properly ought, as such, to be chargeable upon it, as far as the fund would go; and also those, which not coming within that meaning, might be considered as of a class less essential to the principal operations of Government, and therefore to be provided for by the *local* Legislature. Hence the denomination of *permanent* and *local* establishments.

The distinction of classes which arose from the distinction of funds, might probably never have taken place, had not the Assembly, by disregarding the latter, and attempting to encompass and direct the application of the whole indiscriminately, forced the Government into the measure.

The distinction was observed in the Estimate submitted to the Assembly in the Session of 1823. The offices made chargeable upon the *appropriated* and permanent fund amounted to £32,083 11s. 3d.; to the discharge whereof His Excellency informed them that the fund would be nearly, if not fully adequate. The sum required for the *local* establishments amounted to £30,225 19s. 5d. sterling; and for this sum only, His Excellency called upon the Legislature to provide, having sufficient means at his disposal to cover the former.

The crisis in which the existing Constitution of the Province then stood, owing to the Legislative Union of the Canadas, intended by Ministers, (and to postulate against which two very influential members of the Assembly had been despatched to, and then were in England, with petitions,) very probably may have had some weight with the Body. The sum required, or nearly so, for the *local* establishments was voted. But in proceeding to vote the monies, the Assembly, by a set of resolutions prefixed to their vote of money, more distinctly than ever announced their pretensions over all the public monies levied in the Province. This may be termed the epoch of their maturity. The following are the resolutions alluded to—

“ RESOLVED, that it is the opinion of this Committee, that no law  
 “ imposing duties or taxes on His Majesty’s subjects in this Province,  
 “ providing in a general manner funds for defraying the expenses of His  
 “ Majesty’s Civil Government and those of the administration of Justice

“ or of the Legislature in this Province, can be held to confer upon any person the power or the right of applying the monies thence arising or of making a special appropriation and distribution thereof without the consent and authority of the Legislature.”

RESOLVED, that it is the opinion of this Committee, that this House having most humbly made offer to His late Majesty King George the Third, of glorious memory, to provide for the expenses of His Majesty's Civil Government in this Province; His Majesty was pleased to accept the offer of this House, and that His royal will in that behalf was signified to this House by His Excellency Sir John Coape Sherbrooke, Governor in Chief of this Province, in His speech at the opening of the Legislature on the 7th of January, 1818, and that every appropriation of the public monies or any part thereof to the payment either of the expenses of the Civil Government or of the administration of Justice or of any other public charge of this Province, without the participation and consent of this House, is a manifest violation of the rights and privileges of this House.”

RESOLVED, that it is the opinion of this Committee, that this House have always been, and still are disposed most faithfully to fulfil their engagement towards His Majesty, by granting *annually* to His Majesty every necessary aid towards defraying the whole expense of the Civil Government, the administration of Justice and other objects of public charge in this Province, when and as often as this House shall be thereunto required by His Majesty's Representative in this Province.”

One way of “*faithfully fulfilling their engagements towards His Majesty,*” indeed!

Notwithstanding the House had put upon its own journals these high-sounding pretensions, they were averse to endanger the loss of their Bill in the Legislative Council by making them apparent on its face: nor on the other hand would they send a Bill from the House to the Legislative Council, by which they would be understood as receding from those pretensions. The clause of appropriation was therefore made to run thus:—

“ And be it enacted, that the monies herein-before mentioned and appropriated, shall be taken from and charged against the GENERAL FUNDS of the Province, arising from any act or acts in force therein, and from any of the revenues of His Majesty, applicable to the purposes herein before mentioned.”

In the Assembly it was imagined that the terms GENERAL FUNDS OF THE PROVINCE were so comprehensive as to include their pretensions over the appropriated revenue. The Legislative Council considered them as including those monies only, which were unappropriated, and as such at the disposal of the Legislature, and none other. The Legislative Council therefore passed the Bill and it afterwards received the royal assent.\*

The Bill provided for the *local establishments* by *items*. It was also an appropriation for the year only, but as it did not legally affect (whatever might have been intended) the permanent fund for the support of Government nor any other than the unappropriated monies which the Assembly had an unquestionable right to direct and appoint, it passed

\* See note (B) at the end.

Thus far the House of Assembly had endeavoured to carry their point of directing and appointing the application of the permanent and appropriated fund for the support of the Civil Government, by asserting it as their right without accusing the Executive of *illegal pretensions* in resisting their will on the subject. The Bill was a virtual acknowledgment of the appropriation of the permanent fund, and of the right of the Executive to apply it.

But in the Session of 1824 things went to greater extremes than ever. In the Estimate sent to the Assembly, the same distinction between the permanent and local establishments was observed as in the preceding Session. The House had then been content to vote the sums asked for and no more, declaring by a resolution "that the house not being required by His Majesty nor by His Majesty's Representative in this Province to provide for the whole expense of the Civil Government, the administration of Justice, and the other public charges for the present year, but for a part only of those expenses, do for that sole reason abstain from providing for the whole of that expense, and that otherwise this House would readily have provided for the same."

In this Session, however, although they had been asked for no more than the same thing as in the former, they now would, asked or unasked right or wrong, vote the whole Civil List from end to end, declaring by a resolution "that they ought not to comply with the demand now made of them, only to provide for some of those expenses, when the Colonial Government persists in the *illegal pretension*, permanently to dispose without the concurrence of the Legislature of a large portion annually variable, of the public revenue." They accordingly went through the whole Civil List, from first to last, reducing the salaries one-fourth, under the resumption of the exercise of the directing and appointing right, which with respect to the appropriated fund had been dormant the preceding Session.

The reader has seen what is meant by this *concurrence of the Legislature*, in its application to this appropriated fund—to wit, the dictate of the Assembly. The *illegal pretension persisted in*, was the resistance to the *dispossessing* assumption under the pretended directing and appointing right.

The Bill sent to the Legislative Council on the subject was, like the others formerly spoken of, thrown out.

Such was the state of the pretensions of the Assembly at the close of the Session of 1824. Annual appropriations for the whole Civil List, and an entire and unlimited controul over the appropriated fund, in the special direction and appointment of its application. The latter doctrine, which at one time seemed to slumber, revived with such vigour, that it was in the opinion of the Assembly an *illegal pretension* even to persist in resisting it. So much for tolerance!—

It has been seen what in the understanding of the Assembly, is the constitutional manner of providing for the support of the Civil Government of the Province. The manner has also been seen, in which Sir John Sherbrooke's call in His Majesty's name to vote the *ordinary annual expenditure* in a constitutional manner, is by the Assembly turned into a call upon them to vote *annually* the expenses of the Civil Government. The reader has also seen the way in which even this last supposed call, to vote annually



has been complied with; as well as the rise and progress of the *directing* and *appointing* assumption, and attempted *disappropriation* of the appropriated revenue belonging to the King, from the time this object was to have been encompassed under the general denomination of "PUBLIC MONIES" until persistence in *resisting* these assumptions, became in the avowed opinion of the Assembly *illegal pretensions* on the part of His Majesty's Government.

Affairs were in this state (by whose agency and pretensions it is for the reader to determine) when the temporary administration of the Government devolved (by the departure of the Governor in Chief on leave of absence for England) upon the Lieutenant Governor, Sir Francis Burton. No enviable charge certainly.

It were idle to discuss in this place the merits of the Bill of supply passed by the Assembly during the Session of 1825. The Lieutenant Governor no doubt thought it constitutional, or he never would have given it his sanction. Nor was Sir Francis Burton solitary in this opinion. The confident manner in which after the passing of the Bill He addressed the Minister, informing His Lordship "that the differences which had so long subsisted between the legislative Bodies on financial matters had been amicably adjusted" is very indicative of his belief that the desired adjustment had been effected. But after all what does this amount to? That there was the *semblance* (it will be seen presently that it was no more, even taking the statement in the old Gazette for granted in this one instance) of an adjustment without any pledge for its stability:—such an adjustment as seemed to the Lieutenant Governor, acting on his own judgment and for the best, satisfactory:—but yet not such as he would have sanctioned had His Excellency precisely understood the Minister's views on the subject.—Not such an adjustment as the Minister contemplated, nor in conformity with "the special instructions, which had been given by His Majesty's command to the Governor General in his despatches of the 11th September, 1820, and 13th September, 1821." It is the want of a full knowledge and possession of the *instructions* that now constitute the Lieutenant-Governor's apology near the Minister in sanctioning this Bill; for with a knowledge and in possession of such "*special instructions given by HIS MAJESTY'S COMMAND.*" He surely never would, nor could any of his friends or well-wishers have expected him to contravene them.

That he had them not, is recorded on the Journals of the Assembly, in his answer to an address of the 19th February, 1825, calling for the "*instructions, despatches, or parts thereof relating to the proper and permanent provision for the Civil Government, as mentioned in the Governor's Speech of 16th December, 1820, and to the provision for the same during the King's life, of 11th December, 1821.*" That they however, *did exist*, is beyond all doubt, as Lord Bathurst's letter of the 4th June, 1826, puts at rest that question at least.

When therefore the Old Gazette speaks of "*misunderstandings thus so perniciously REVIVED*" (alluding to the result of the last Session, 1826) and observes "*that the whole Province approved of their TERMINATION*" (referring to the Session of 1825), and regrets their RENEWAL," it mis-

*represents* the case. They were never *terminated*, whatever appearances might have been at the time. They never could have been, until an adjustment had been effected in conformity with the *special instructions*; or until Lord Bathurst had thought proper to revoke, and no longer insist upon them, which the letter alluded to, shews to have been far from His Lordship's intention.

Nor can the *misunderstanding* be said to have *revived*, as Lord Bathurst's letter shews that instead of having ever come to a "*termination*" it never had been suspended, much less terminated; but that it actually was in the same state, if not worse than ever. The "*special instructions*" given "*by His Majesty's Command, to the Governor General*" not having been consulted, or adhered to, His Lordship says "*it is not in his power to consider this arrangement (the Bill) as in any degree satisfactory.*" Without the Minister's participation the *misunderstanding* could not have been *terminated*. That the *instructions* were not consulted and adhered to, it is not nor ever has been pretended that the Lieutenant-Governor was in the least blameable, as He could not find any such in the place where they might indeed be expected to have been found, but where, however, it would seem they were not. But still, as they existed, whatever the Lieutenant Governor or any other in the like situation, might do, in the hope and belief of well-doing, if nevertheless done contrary to, or in non conformity with them, it by no means *terminated* the *misunderstanding*. The attempt to make it appear, that the *misunderstanding terminated* with the Bill of Supply passed in 1825, and *revived* with the rejection of that of last Session, 1826, is of a piece with the other matters noticed in connection with this subject from the commencement, and the purpose for which it is now brought forward cannot be mistaken.

Whatever interpretation may be put on the Bill passed in 1825, there is nothing more certain than that the Lieutenant-Governor was very far from understanding it as the Assembly, or rather as the Old Gazette, may do. His Excellency did not understand himself, as yielding in the smallest degree to the *directing and appointing* assumption, in the sense before alluded to. Far from imagining that any such assumption was directly or virtually exercised upon the *appropriated* fund, He did not see cause to suspect that it was exercised or intended so to be, on the supply in aid of it, out of the unappropriated revenue, otherwise than in the general direction, that it was "*for the purpose of defraying the said expenses of the Civil Government of this Province, and of the administration of justice therein, and the other expenses of the said year*" (1825.) The aid indeed was an indefinite one, but the Bill was unshackled by the *directing and appointing* assumption, and the *encompassing* terms of "*Public Monies*" and "*General Funds*" were wholly omitted. His Excellency, although not in possession of the instructions mentioned in the letter of the 4th June, 1825, where he would have seen the "*NECESSITY*" under which the Governor in Chief had by reason of the King's commands been acting since 1820, was nevertheless very sensible that the controul of the appropriated fund was exclusively with the Executive, and as such never would have suffered it to be

touched. In sanctioning the Bill, He was we find in his letter to Lord Bathurst, under the fullest persuasion that the Assembly by that Bill of Supply had "*decidedly acknowledged the right of the Crown to dispose of the revenue arising out of the 14 Geo. III, c. 83*" and that as such its "*integrity*" was not in "*any degree*" compromised.

If, therefore, the Lieutenant Governor on the one side understood, in giving his sanction to this bill, that the exclusive disposal of the appropriated fund was *decidedly acknowledged* to be in the Executive, and its *integrity* as such not in any degree compromised or impaired: and the Assembly, on the other hand (whose pretensions, under, the *directing* and *appointing* assumptions were also on *their side* unimpaired and in full vigour, as they stood recorded and unrepealed on the journals of the House,) understood that such *acknowledgment* was not even *virtually* much less *decidedly* admitted by the Bill, nor that the integrity and controul of the appropriated fund was by that body intended to be exclusively left with the Executive, as understood by the latter, the misunderstanding was in reality very far from being terminated. The parties were in fact further from a fair understanding than ever, both proceeding upon an entire misconception of each other's views; a circumstance which could not fail to make matters worse the moment an *éclaircissement* took place. Although no address was presented to the Lieutenant Governor by the House, accounting for the *reduction* in the amount of the aid required by estimate, subsequent circumstances very clearly prove that the *excluding* power was in action, certain offices having been omitted in the *votes* of the Assembly, which, although not specified in the Bill, nevertheless was manifest on the journals of the House, to which, as a *law binding on the Executive* in this matter, the latter was expected to refer and be guided by, in the application of the *whole sum* mentioned in the bill.

Whether the Lieutenant Governor would or would not have been guided by the votes of the Assembly as they stood on the journals, had he remained in the administration of the Government, and been left to pursue his own opinion, without reference to the views of the Minister, it is difficult to say. The old Gazette distinctly says, that undoubtedly the Assembly expected he would do so. Had they been disappointed in this expectation, which is no improbable thing, (for the Lieutenant-Governor, whatever he might have thought of the *policy* of consulting the votes, never would in any probability, so far have held them to be *law* as to *exclude* from the Civil List, or *abolish* any office which the Minister, on a former occasion, by command of the King, had expressly refused to exclude and abolish, but on the contrary expressly signified to be necessary to His Civil Government of the Province,) the *misunderstanding* must have *revived*, unless the Assembly were to relinquish *in toto* the *directing* and *appointing* pretensions, of which, however, there was no indication by any of their proceedings.

At any rate, the *revival*, as it is called in the Old Gazette, of the *misunderstanding* must have occurred last Session, (1826) had the Lieutenant-Governor himself even remained in the administration of the Government,

His Excellency, however unpleasant it must have been to withhold his sanction from a Bill similar in form and substance to that which in the previous Session he had sanctioned, would have been, according to Lord Bathurst's letter to him of the 4th June, 1825, under the necessity of doing so, unless His Lordship could have been prevailed upon to alter his opinion :—not a very probable event, after the progress made during the antecedent seven years of the pretensions above noticed, which could not have escaped His Lordship's attention.

The pretended *revival* of the *misunderstanding* last Session could not have been avoided, in whatever hands the administration of the Government were placed, the same NECESSITY (as mentioned in Lord Bathurst's letter) which "*had been imposed upon the Governor General,*" in the despatches of 1820 and 1821, still existing in full vigour. The Minister's disapprobation of the Bill of supply of 1825 is ascribed by the Old Gazette to the want of *correct information*, with some *innuendoes* that *incorrect information* has been given to His Lordship. Now whatever information might or might not have been conveyed to Lord Bathurst on the subject from other sources, it is quite clear that His Lordship could not be under any misconception as to his *own* despatches of September, 1820, and September, 1821, and it is solely *to these*, he refers in his despatch of the 4th June, 1825, expressing his disapproval of the bill, because it was not consonant *with them*.

To ascribe therefore, the *revival* of the *misunderstanding* to a want of correct information, or to misinformation, is merely gratuitous, and not at all to the purpose, the grounds of His Lordship's disapproval of the Bill of Supply resting entirely on *his own* despatches of a date five and four years anterior to it, and of which he was fully cognizant. In truth, the evil such as it is, is not imputable to a want of information or to incorrect information given to the *Minister*, but is rather *vice versa*,—to a want of information in the Lieutenant-Governor, not from any fault of his, and it would be vain to enquire by whose fault, or whether there were any fault in the question, since if the despatches *had been* in His Excellency's possession, the Old Gazette will not say that a different course would have been pursued by the Assembly to meet the views of the minister; from that which they pursued *without* reference to the despatches, the substance of which had ineffectually been previously conveyed to them by the Governor in Chief in his speeches from the throne. The full knowledge and possession of the "*special instructions given by HIS MAJESTY'S COMMAND,*" would have imposed upon the Lieutenant Governor the *necessity* of withholding his assent from the Bill. The pre-existing *misunderstanding* would have been continued, it is true, but without being any thing worse than before : whereas the seeming termination of it being unreal and founded, as shewn, on misconception, becomes an additional source of discord, and removes the parties further than ever from terminating their differences.

The Old Gazette substantively admits, that a different course under any circumstances was not to have been expected, as that would have been to "*abandon their birth-right,—their absolute property in their goods and estates ;—in short, to pronounce sentence on themselves as the only people*

"unworthy of free government from the Straits of Magellan to Hudson's Bay."—Say rather, their birth-right to disappropriate an appropriated fund appertaining to the King!—to dispossess him of his right in the fund, and to make his Government in the Colony pronounce sentence upon itself, as the most precarious and unsettled mixed government under the Sun, and as such most unworthy and unfit even to rank with the unsteady republics growing up on this continent.

The literal and obvious meaning of Lord Bathurst's letter is also perverted in the article under discussion from the Old Gazette. For instance, it said: "*Had Lord Bathurst been correctly informed, he could not have spoken of the revenue raised 'UNDER COLONIAL ACTS' as the ONLY revenue to be disposed of by the Colonial Legislature:—he could not have spoken of all the permanent revenues as already appropriated which has never yet been pretended.*" Now without entering into the merits of these propositions in the abstract, it suffices to say, that His Lordship has said no such thing. Lord Bathurst spoke of the revenue, "*known by the NAME of the PERMANENT REVENUE.*" When we speak in this Province of the *permanent revenue* in reference to the Civil List, it is well understood that that revenue chiefly consists of the duties imposed by the act of the British Parliament of the 14 Geo. III. ch. 88, establishing a permanent fund, towards supporting the Civil Government of the Province. This revenue we peculiarly distinguish by the name of the *permanent revenue* of the Crown, it being notorious that there are other revenues both under British and Colonial Acts, that remain unappropriated, and as such at the disposal of the Legislature.

Lord Bathurst does not say, nor mean by that letter to say "*all the permanent revenues were already appropriated.*" His Lordship was speaking of the revenue "*arising out of the 14th Geo. III.*" which he specifically quotes, and of none other. He says "*the Executive Government had sent in an estimate in which no distinction was made between the EXPENDITURE CHARGED UPON THE PERMANENT REVENUE of the Crown, and that which remained to be provided for out of the REVENUE RAISED UNDER COLONIAL ACTS.*" His Lordship is not as specific as he no doubt would have been, had he been called upon to *deny* the proposition stated in the Old Gazette. If we observe that the *Revenue arising out of 14 Geo. III.* is particularly pointed at, the last five words of His Lordship "*(revenues raised under Colonial Acts.)*" are more comprehensive than at first sight they would seem, and mean generally the whole *unappropriated* revenues of the Province, as well those of a permanent as of a temporary nature, remaining at the disposal of the Legislature, whether raised under British or Colonial Acts, in contradiction to the *appropriated and permanent revenue.*

His Lordship's letter is very clear and decisive in two points: first—that the Revenues arising out of the act quoted, constitute a fund exclusively belonging to and applicable by the King, towards the support of the Civil Government of the Province. Secondly—that this fund constituting "*the King's permanent Revenue has certain fixed charges placed upon it,*"

Whatever inconsistency the writer of the article in the Old Gazette may imagine in the fault found by Lord Bathurst as to the "FORM" of the estimate sent down in 1825, which he says was substantially the same as those of 1819, 1821 and 1822, it is nevertheless true that in all those estimates, the *last* as well as the *first*, the permanent revenue alluded to, is invariably considered as exclusively belonging to the Crown, and as such applicable by it generally to the discharge of the whole sum required by Government for the civil expenditure of the year. It was not indeed until the year 1823, when the *dispossessing* pretensions and a refusal to grant a supply in aid, unless under *directing and appointing* terms, considered by the other branches to be so unconstitutional as to be tantamount to an absolute denial of all aid, that the Government found itself necessitated to determine which should be the "*fixed charges*" or establishments that ought, according to the intent and meaning of the law providing the fund, to be placed upon it. Lord Bathurst's letter of June, 1825, affords ample proof that this measure was with his approbation. That it was not done before 1823, may possibly have been owing to a hope that the measures of the Assembly would prevent the necessity of it. Having been adopted, it is certain that His Lordship decidedly approves of it, if he did not in the first instance, even positively direct it, (for the precise fact is not apparent by any document published) otherwise it is not probable he would so strongly have disapproved in his despatch of the deviation from the estimates of the preceding years, by which the *permanent charges* upon the *permanent fund* were distinguished and specified.

The Old Gazette makes also Lord Bathurst, for want of correct information, to have "*confounded two things perfectly distinct, the resolutions and votes of the Assembly, not LEGALLY binding on the Executive, and the Act of Supply which ALONE was binding on it.*" His Lordship has not confounded them. He quotes the words "*amount of votes*," probably from the Lieutenant Governor's letter on the subject, and then proceeds to state his objections to the bill, from which also he quotes a sentence, giving his views upon the whole matter. But if His Lordship had even done so, he would not have been far wrong; since, notwithstanding the bill, the votes of the House, as already observed, also constitute, in the opinion of most of that body, a *law* obligatory on the Executive, the non-observance of which would bring on at each succeeding Session new quarrels and endless misunderstandings.

One of the reasons afforded in support of the *dispossessing* doctrine is, that the monies may not "go to the payment of persons who render no service to the Colony for the money, or are not even resident in the Province."—Are past services then to be of no account? These individuals, if such there be, must have had no doubt some claim on the King before they were placed in office, and their salaries granted. But even supposing neither the one or the other to be the case, they are in possession of office under the King's authority, and have *His* faith that they are not to be dismissed without some compensation. Is the *King's faith* nothing? Besides it has been expressly signified by his command, that some of these

offices, attempted to be extinguished by the exercise of the *excluding* power, are, in his opinion, necessary to the carrying on of the government, notwithstanding the opinion of the Assembly to the contrary.

Just representations on this or any other subject must, and will unquestionably be always attended to, but then let justice to the individual as well as to the public, be the basis of them. The Government, as well here as at home, will not refuse a remedy to an abuse,—but let remedies be asked for abuses only, otherwise, they would themselves become the greater abuses, if improperly applied.

It is not intended here to refute the woeful account in the Old Gazette of the state of the Province, and the public embarrassments in which we are involved. They may be considerable, but the Province, nevertheless, is prospering, and the common observation of every man must convince him of the fact. The Government is indeed retarded in its operations owing to the pretensions above noticed, and public improvement must consequently feel the effects of it until an understanding shall come round. If the evils are of such magnitude, as represented in the Old Gazette, the Province is low indeed, but the remedy is simple, and within reach of the Assembly. Let them cease aspiring to the absolute sovereignty of the Province, and be content with the place which the law assigns them as one branch of the Constitution.

In the mean time let the country understand the true question, as the most important step to a good and *permanent* understanding. There is in the matter itself a redeeming principle that must gain strength, if the people are but rightly informed of it. Let means be taken to enable the country gentlemen, and principle persons throughout the country places, to comprehend the precise point in dispute. Let every one taking an interest in it impartially seek information on the subject, and freely and fearlessly impart to others such information as he may possess on it, and his opinion about it. Let the respectable Clergy throughout the country parishes be put in possession of it, and they will, from a sense of the justice of the case, (and it is only in this respect that the question ought to be put,) as well as from inclination and duty to the King, honestly speak out their sentiments. Their influence in a rightful cause is decisive, and in none other ought, nor will they be expected to take an interest. The rights of the Clergy and of the Crown are cognate and inseparable:—they are alike inviolable. The maintenance and support of the rights of the one, is a pledge for the stability of the other.—The downfall or successful invasion of the King's rights, leaves no pledge for the security of their own. But to repeat, it is not so much in this sense, as from a pure disinterested sense of the *justice* of the case, that it is desirable they should think and speak on the subject.

Let every one who can think and reason for himself on the subject speak out, unawed by the multitude who, misled by the false tokens of the times, speak loudest from their mere numbers, and who imagine that in speaking loudest, they must, taking their numbers also to account, speak most to the purpose and be right in the end. Let no one complacently give up his own judgment because he cannot convince his adversary; nor yield to obstinate

prejudice, that opinion which he cannot concede to good argument. Above all, let no one imagine that the cause is hopeless because it is surrounded with difficulties. It will triumph at last, because it is founded on truth.

Let it be remembered that it is not because the King, whose subjects we are, wears a crown, wields a sceptre (mere emblems of the regal office) and is arrayed in power, that our respect is due to Him and *his* rights. Let us view him as every rational British subject ought to view his Sovereign :—as the Individual whom Providence hath for *our good*, and for *our* common protection, placed in a post supereminently exalted and honourable truly, as the Chief Magistrate of the Realm, but of incessant care and great solicitude :—as the Individual who is charged with the fearful responsibility of sustaining alone one branch of the Constitution, and of the Executive power of our country, and who has, as such, a double claim on our confidence, our respect, and our gratitude.—That if it were possible HE could compromise those rights we call *HIS*, but which belonging rather to his REGAL OFFICE than to himself, are essentially *OURS* and for *OUR BENEFIT*, He would thereby endanger *our* rights, and by that means do *US* great injustice. That HE is bound to uphold inviolably and with a firm hand, not only his own part (as King) in the Constitution, but the *entire* Constitution, and to hand it unimpaired to his successor, and to our posterity, as their best and dearest patrimony.—That *our rights* and *our liberties* are not less concerned in *His* firmness than in that of *our own* Representatives.—That weakness, always a vice in those whose duties, subordinate to *his*, are determined by law, would be much more so in *Him*.—Finally, that it is the duty of every subject who has a head to think and a heart to feel, to enquire in a temperate and unbiassed spirit, whether, in the contest wherein the Legislature is involved, the King and his servants in authority under him, are from unlawful, vicious, or corrupt motives, contending in a wrong cause, for an unjust and unconstitutional object ; or whether they are not rather repelling an unjust and unconstitutional aggression, and rightfully and virtuously maintaining a sound constitutional point, never to be given up but with the sovereignty of the Province.

To adopt in the present matter some of the words of our own immortal Nelson, in a momentous struggle of another nature, in which the rights of Our King and Country were also at stake, it may, at the present crisis, very properly be proclaimed that the “ COUNTRY expects every man will do his duty.”

If this point be surrendered, it is hard to say what other point of *major* importance will next be demanded. To yield one right to an overweening antagonist, is often misinterpreted by the latter into a *right* to expect that another will be yielded him if he will pertinaciously insist upon further concession.—However tardy the Legislative authorities may be in coming to a fair and a permanent understanding (and unless it be permanent it had better not be) on this constitutionally important matter, it is very certain that the King’s responsible servants, never can nor will so far forget their self-respect and their duty to their Master, as to suffer in this question the common rights of His Majesty, of their country, and of all the King’s



subjects in this Province as involved in them, to be in the least compromised. Their determination cannot but have been adopted upon deliberation and a full knowledge of the case in all its bearings, and it will no doubt be persevered in with wisdom and with firmness.

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(A)

The Act 14 Geo. III ch. 88 establishing a fund for defraying the expenses of the *Administration of Justice and support of the Civil Government of the Province of Quebec*, is in no respect altered or affected, either in express terms, or by implication, by the 18th Geo. III chap. 12, much less by the 31st Geo. III chap. 31, commonly called the Constitutional Act. The fund being lawfully acquired and established by Parliament in favour of the King, for the support of His Government in the Province (by the conquest whereof he had succeeded to the rights of the King of France in certain duties appertaining to him at that period) neither was nor could be intended to be affected by an act which far from looking *retrospectively* looked in the opposite direction. By the 18th Geo. 3, ch. 12, it is simply declared that "the King and Parliament of Great Britain will not impose any duty, tax, or assessment whatever payable in any of His Majesty's Colonies &c." without any general expression of a repealing intent as to any duties levied in the Colonies, except upon TEA as imposed by the 7th Geo. III ch. 46, which was specifically repealed. It is to be observed that the duties on Tea were for *contributing to the General defence of the Empire*," and that although the Parliament repealed them, it did so on the sole ground of *expedience* :---but those duties levied on other articles which had pre-existed for years in the North American and West Indian Colonies, and which were annually remitted to England for the general defence of the Empire, remained and still remain to this day undisturbed as they were intended to be by this act. A fund solely and exclusively for the internal purpose of *defraying the administration of Justice and support of the Civil Government of the Province itself*, is surely quite another matter from that which the King and Parliament had in view, as entirely relating to the *general defence of the Empire*, for which purpose they only declare they "will not impose any duty" giving, as a reason for this voluntary renunciation to a right they unquestionably thought they had,---(or why renounce it?---) their belief that "His Majesty's faithful subjects might, nevertheless be disposed to acknowledge the justice of contributing to that common defence."

The 31st Geo. 3, ch. 31 (Constitutional Act) expressly reserves the power to His Majesty and the Parliament of Great Britain of imposing duties for the regulation of navigation and commerce, leaving the *net produce of all duties which shall be so imposed* to be applied by the Legislature of the Province. But where is the *disappropriating and disposing* intent, either in this or the preceding Act of the 18th Geo. III ch. 12, with respect to the fund established and appropriated by the 14th Geo. III ch. 88?

The opinion of the British Parliament as late as 1822, on this point is very clearly expressed in the CANADA TRADE ACT. The preamble to the 27th section of this act recites the title of the Statute 14th Geo. III ch. 88, mentioning that the duties imposed by it are according to the same, "directed to be *applied* under the authority of the Lord High Treasurer or Commissioner of His Majesty's Treasury." The enacting part of the same section provides in specific words, that the "*Lords Commissioners of His Majesty's Treasury for the United Kingdom of Great Britain and Ireland for the time being, may make such order respecting the proportion in which the same (the duties levied under the 14th Geo. III ch. 88) shall be expended within each of the said Provinces respectively for the purposes mentioned in the said act, as to them shall seem meet.*"

The best constitutional lawyers in Britain have expressed a decided opinion on the matter, and that opinion has the unqualified confirmation of the British Government and will as decidedly have also that of the British Parliament, whenever (if ever) it may become

necessary to submit the subject to its wisdom ;---against these there is to be sure the weighty authority to the contrary of a majority in the Assembly, and—The Old Quebec Gazette !

## (B)

It is proper to observe, however, that the Legislative Council in passing this Bill most strongly protested against it. The following is extracted from the Journals of that Body :—

RESOLVED, “ that the Legislative Council see with great concern and surprise that the “ Bills sent from the Assembly intituled “ *An Act to enable His Majesty to defray certain arrears of expenses appertaining to the Civil Government of the Province*” and “ *An Act to appropriate certain sums of money towards enabling His Majesty to defray certain expenses therein mentioned appertaining to His Majesty’s Civil Government in this Province for the year 1823*” do contain very objectionable matter in granting monies “ from the GENERAL FUNDS OF THE PROVINCE, no funds so denominated having legal “ existence ; and the titles, preambles, and clauses of grant and appropriation in the said “ acts, being worded so generally and ambiguously as still to assume, or mean to leave “ in doubt the right pretended to by the Assembly of disposing of monies raised and “ appropriated and disposed of either by act or acts of the Imperial Legislature, or by “ His Majesty in respect to His Majesty’s prerogative rights and revenues, and fines and “ forfeitures ; or by act or acts of the Provincial Legislature containing permanent ap- “ propriations, or where the fines thereby imposed are not reserved for the future dispo- “ sition thereof. Against all which assumptions and pretensions, whether directly or “ indirectly or in any shape expressed, made, or implied, by open or covert language or “ meaning, the Legislative Council solemnly protest.”

“ RESOLVED, that the Legislative Council have concurred in the said Bills, as a mea- “ sure of necessity, resulting from the very advanced period of the session, and the con- “ sequent impracticability if they were rejected of their being replaced before the “ prorogation, and further they have concurred therein to prevent the great and indivi- “ dual distress which the present rejection of the said Bills would have rendered una- “ voidable. But in so concurring, the Legislative Council declare that they reserve all “ their rights and privileges unabated, and that they will not hereafter admit upon any “ occasion whatsoever of a proceeding so contrary to the rules and method of “ Parliament.

The words “ GENERAL FUNDS OF THE PROVINCE” are to be found in an Act on the Provincial Statute-Book (39 Geo. III ch. 9) which Act is a *dead letter*, never having taken effect, the repeal of the Act of the Imperial Parliament (of the 14th Geo. III ch. 88) by the British Legislature, being according to the Provincial Act, a *condition precedent* without which it is not to go into effect. These *General Funds* were to have consisted of a consolidation of duties, including those of the 14th Geo. III ch. 88, which at that time did not constitute a fund very considerable in amount. But it is also to be observed, that in the Statute 14th Geo. III ch. 88, which provides the fund towards defraying the administration of Justice and Civil Government of the Province of Quebec, *Upper Canada*, being a part of the Old *Province of Quebec*, was and still is interested, and consequently the British Parliament could not by any measure or *conditional* Legislative Act on the part of this Province, without a corresponding step on the part of the Upper Province repeal an Act in which the latter had a considerable prospective interest. The repeal of the British Act at the instance of only *one* of the parties concerned, neither necessary nor policy requiring such a course, would have been premature and unjust towards the Upper Province, which in cases of misunderstanding in financial matters with Lower Canada, being the party most likely to suffer, is on that account alone the more entitled to the care and protection of the Imperial Parliament.