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STUDIES IN ECONOMICS AND POLITICAL SCIENCE

Edited by Prof. W. A. S. HEWINS,
Director of the London School of Economics.

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SELF-GOVERNMENT IN CANADA AND HOW IT WAS ACHIEVED.

SELF-GOVERNMENT IN CANADA

AND HOW IT WAS ACHIEVED:

THE STORY OF
LORD DURHAM'S
REPORT.

By F. BRADSHAW, B.A.,

Senior Hulme Exhibitioner, Brasenose Coll., Oxford.

London:

P. S. KING & SON,
ORCHARD HOUSE, WESTMINSTER.

1903.

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SELF-GOVERNMENT

IN CANADA

AND HOW IT WAS ACHIEVED

THE STORY OF

OUR COUNTRY



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1908

H. R. KING & SON

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1908

PREFACE.

THIS volume is the result of research work carried on in the seminar of the Director at the London School of Economics and Political Science.

The Author wishes to acknowledge the unfailing kindness of the Director, Professor W. A. S. Hewins, M.A., who was not only ready on all occasions to give him the benefit of his experience, but also made time to read through the proof-sheets.

To Mr. Graham Wallas, who suggested the subject and supplied useful hints from time to time, as well as to Mr. J. McKillop, Librarian of the British Library of Political Science, for help with the bibliographies, the best thanks of the Author are tendered.

F. B.

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SELF-GOVERNMENT IN CANADA, AND HOW IT WAS ACHIEVED.

CHAPTER I.

LORD DURHAM AND HIS PARTY.

JOHN GEORGE LAMBTON, first Earl of Durham, the eldest son of William Henry Lambton, who sat in parliament as the member for Durham City, was of gentle but not noble birth, and the family estates descended to him in unbroken male succession from the twelfth century. He was born at Berkeley Square, London, on April 12th, 1792, and died at Cowes, July 28th, 1840.

After leaving school at Eton, he served in the army during 1810 and 1811, first as cornet and afterwards as lieutenant of the 10th Dragoons. He took his seat as a Whig member for the County of Durham in 1813, after a bye-election, and continued as one of the county's representatives till his elevation to the Peerage in 1828. Durham was Lord Privy Seal in Earl Grey's Reform Administration, and on his resignation, March 14th, 1833, he was created Viscount Lambton and Earl of Durham.

In politics Durham was a thorough Radical, not only as the heir of a Radical family, but from sincere conviction. Some of his most telling speeches in the House were on behalf of oppressed nationalities. He spoke in favour of mediation when Norway was struggling against Sweden, and wished to preserve the Republic of Genoa in 1815.

He opposed the Corn Bill of 1815, and attacked the Government for the Peterloo massacre in 1819. Naturally he sympathised with the demand for parliamentary reform. His plans included electoral districts, household suffrage, and triennial parliaments. Durham's marriage with Earl Grey's daughter increased his political importance, and he was made a Privy Councillor and Lord Privy Seal in the Reform Administration of 1830. He had a considerable share in the drafting of the great Reform Bill; one of his suggestions was the introduction of the ballot, but the Whigs were not yet ready for such a measure, and Durham soon became an object of suspicion to his fellow-ministers. Durham's education was by no means worthy of his natural gifts as a statesman, and his hatred for half-measures, combined with a complete disregard for the remonstrances of the more timid members of the Cabinet, ill fitted him for a subordinate position. One of those who had experienced Durham's scorn nicknamed him the "Dissenting Minister," and it was a relief to all parties when he accepted the post of Ambassador Extraordinary to St. Petersburg in 1832. Within a few weeks he returned; for, as might have been expected, he had too little control of his feelings and perhaps too great an impatience of the obvious insincerity of Russian diplomacy to render his success possible in such a sphere.

Soon after his return from St. Petersburg Durham resigned his seat in the Cabinet. Already he was giving signs of that malady which was to carry him off, and his obvious unpopularity with his colleagues was another determining cause. Earl Grey, despite Durham's frequent outbursts of rudeness towards himself, was devotedly attached to his son-in-law, and wished to bring him into the Cabinet again. The other members objected, and Durham himself was not too eager to resume a subordinate position. The extreme Whigs or Radicals were discontented with the Reform Bill, which really threw all power into the hands of the hated middle classes. The various Reform

Clubs and Unions felt that they who had made reform possible by their agitation had been tricked by the Whigs, and began to consider the possibility of a separate Radical Party. They were as strong in leaders as they were weak in numbers in Parliament. Hume, Roebuck, Grote, Molesworth, Leader, and others proved as little friendly to the ministry of Lord Melbourne as they were to that of Earl Grey, and when the actual leadership of the Tories passed into the able hands of Sir Robert Peel, it was evident that the days of the ministry were numbered. Melbourne only retained office by the good-will of O'Connell, the repealer, and the Radicals; and when the troubles in Canada began to grow serious the Radicals openly abandoned the ministry, and scoffed at the high-handed measures that had been devised by a Liberal minister to crush out Liberal movements. Hume and Roebuck boasted openly of the coming triumph of the Canadian Republicans, and the quick suppression of the rising by Colborne only angered them the more.

While the Whigs were sinking deeper every day in popular estimation, although they had forced Peel to resign in 1835, Durham was a prey to two opposite tendencies. His influence in the North of England was very great, and it was yet possible that he might make his own terms with the Whigs, now led by Melbourne. He had been present at a banquet to Earl Grey at Edinburgh in 1834, and his speech there against the lukewarmness of certain so-called "Reformers" had been taken by Lord Brougham, the Chancellor, as a personal attack. The warfare continued, both in newspapers and at meetings, and Durham had followed up his Edinburgh speech by expressing the most advanced Radical sentiments at other meetings in Scotland. Durham was a sincere friend to the theories of the Radicals, but their practices did not appeal to him so strongly. He was himself a wealthy landowner, and there were signs of socialistic movements among the Radicals. Moreover, the Radicals were not agreed upon their programme, and

Durham could not count upon much support, except from leaders of the stamp of Grote, and Molesworth. The philosophic Radicals appreciated Durham, the others were ready to accept him if he could convince them that he had the gift of leadership.

Durham was, however, too dangerous to leave at liberty, and he was sent a second time to St. Petersburg. Again Durham felt out of his element, and soon returned. He met with a great reception from the Radicals, and for a moment the ministers were alarmed. Durham's irresolution, fortunately for himself, allowed the chance to pass. It was an ingenious scheme to send the Radical Earl to Canada to restore order, and mediate between the warring parties there. In any case the ministry would score; if Durham succeeded—an unlikely event—the ministry might hope for a further lease of power from the country, and they would share the credit of his success; if he failed, it would provide an excuse for acknowledging the independence of a troublesome colony, as the Radicals proposed, while at the same time it would ruin Durham politically for ever. The Earl had only one friend in the Cabinet—Lord John Russell; Melbourne despised Durham's abilities as much as he feared his ambition. In sending Durham the ministry, from their own point of view, made a mistake, as Melbourne acknowledged in a private letter a few months afterwards. At last the Earl felt himself his own master, and his terms were hard. Only at the personal request of the Queen would Durham accept the post. He had his way. It was not the first time that Durham had been designated as Governor-General of Canada. Before Lord Gosford set out on his ill-omened mission, Durham was sounded, but the Earl knew little about Canada; his interests lay in political reform at home, and his personal health was not good.

On January 16th, 1838, Parliament reassembled. Men were on the tiptoe of expectation; for the Christmas recess had occurred too soon after the outbreak of the rebellion to

allow of a policy being outlined by the Government. Now the unseemly jubilation of some of the Radicals had been somewhat toned down by the easy way in which the rising had been suppressed. The Tories were delighted at the prospect of a ministerial defeat, for they knew that without the support of O'Connell and the Radicals, the Melbourne Government was at their mercy. Many of the Irish wilfully absented themselves, and the Radicals were avowedly hostile; Sir Robert Peel and the Duke of Wellington whipped up their supporters, and Melbourne was not sure of a majority even in the House of Commons. In performance of a promise given before the prorogation Lord John Russell unfolded his scheme. He proposed to suspend the Lower Canadian Constitution for two years, and moved an Address to the Throne pledging the House to vindicate the Royal authority in Canada. He proceeded to give a short account of the history of the colony since its cession, and put forward the view that as the Assembly of Lower Canada had expressed itself satisfied with the recommendations of the Commissioners of 1828, their Report was the standard by which it was fair to decide whether the Canadians had any real grievances. His speech was able, but from its special pleading was not likely to convince the followers of Sir Robert Peel. Two passages are worthy of quotation. He gave an outline of the intended Bill, and sketched the character which the new Governor must bear, if his mission should be a success. "I think it is most important that the person to be sent from this country should be one whose conduct and character should be beyond exception; a person not conversant solely with matters of administration, but with the more important affairs which are brought before parliament. I think he should be conversant with the affairs of the various European States; and, moreover, that it should be implied by his nomination, that we were not at all opposed to opinions the most liberal, and that we were favourable to popular feelings and popular rights. Having said this much, I

know not why I should refrain from adding that Her Majesty has been pleased to intrust the conduct of this affair to one whom her advisers think in every respect fitted for the charge, namely, the Earl of Durham ; and that noble lord, having accepted the office, will proceed in due time to perform its important duties." The second passage forms the concluding part of the speech. He said that although a time might arrive when he would not be indisposed "to give the 1,400,000 of our present fellow-subjects who are living in the provinces of North America a participation in the perfect freedom enjoyed by the Mother Country," he thought that the day for separation was still in the distance.

It was soon evident that, although the enemies of the ministry had no alternative scheme to propose, they were quite capable of rendering that of the Government unworkable. Hume and Grote blamed the Government for first driving the colonists to desperation, and then applying coercion to avoid the effects of their own blundering. Sir Robert Peel's speech was scarcely worthy of him, but he had the magnanimity to expose Hume's inconsistency in blaming the ministry for the rebellion which he had himself partly caused by his unpatriotic advice to Mackenzie, the leader of the rising in Upper Canada. Buller and Leader also spoke. The former, probably knowing that he for one would have to assist Lord Durham in executing the arrangements now being made, insisted that the Royal authority should be vindicated ; there was no rational ground for separation, but the just grievances of the Canadians should be remedied as speedily as possible. Leader attempted to adjourn the House, for the Radicals were unwilling to precipitate the fall of the ministry, while at the same time they could not support the Bill. By a clever manœuvre Russell carried the Address with a large majority, but he offended many of his supporters.

On January 17th the Bill was brought in. Russell explained its leading provisions. His explanation was

not very clear, and the new Bill was mercilessly criticised by Peel. Lord John dared not risk a defeat, and he allowed Peel to amend in such a way that it was all but impossible to know what powers were or were not conferred on Lord Durham. On the 22nd the Bill was read a second time, and then Roebuck,¹ on the motion of Grote, was heard at the Bar of the House against the Bill. Some difficulty was raised as to the capacity in which he appeared, but it was smoothed over. Roebuck addressed the House in one of his usual speeches. Argument there was none, but what it lacked in argument was made up in invective. He attempted to show that the Canadians were wholly in the right, but the House heard him with little attention. He was followed by a number of speakers, all of whom agreed in nothing except eulogy of Lord Durham. On the 23rd the second reading was carried by 246. Only a little knot of Radicals opposed it, and even they did so as a mere formality. At the third reading, on January 29th, the Noes fell to 8, but it was a Bill amended to suit Sir Robert Peel and the Tories. The debate is dreary to read, for it only shows the utter absence of any real appreciation of the issues at stake. Men talked airily of the inevitable separation from the Mother Country, or proposed various impossible schemes for the federation or union of the British North-American Provinces. That the colonists themselves had any views on the matter never seemed to occur to the speakers. The ignorance upon the troubles in Upper Canada was only equalled by the perversity with which ministers and Opposition alike approached the question of Lower Canada. The one redeeming feature in the debate was the readiness with which all parties, from Lord John Russell to Hume, agreed in ascribing to Durham the most despotic authority in his new government.

If ever a man had an excuse for over-estimating his

¹ Roebuck, when M.P. for Bath, had supported the French Canadians, and had been made their Agent by the Assembly of Lower Canada. He lost his seat in 1835.

powers, Lord Durham had. Russell said¹ it was proposed "to set aside and suspend for a time the present Constitution of Lower Canada, and to place the authority—despotic authority if the right hon. baronet (Sir Robert Peel) would have it so—in the hands of the Governor-General in Council." Again, on January 26th, Russell said,² "In short, Lord Durham in proceeding to Lower Canada will proceed there with our instructions, and will not consider his discretion fettered by any resolution or any vote which has been come to by the House on the subject." Molesworth was even more emphatic³ : "The Governor alone should be made answerable for every act done or omitted ; all responsibility should be concentrated upon his single head, and the noble lord should be made to feel that, though he alone would merit all the praise of success, he must equally bear all the odium, blame, and deep discredit of failure. . . . In proportion as Lord Durham was independent of the control of the Colonial Office, or even of Her Majesty's Government, in exactly the same ratio would the probability of a successful termination of these affairs increase. . . . The first act of the noble lord should be one of grace and mercy, an oblivion of all past political offences—a general amnesty." Finally, Hume, speaking for the "Friends of Canada," said⁴ "that he should be sorry to see the despotic power granted by that Act—for despotic it was in every sense of the term—exercised by any person but Lord Durham, to whom he had no objection to confide it."

The course of the debate in the House of Lords, where Lord Glenelg, the Colonial Secretary, brought in the Bill on January 18th, was not dissimilar in some respects to that in the Commons. Glenelg had not forgotten the dispatches of Gosford telling of the dreams of Papineau and "la nation Canadienne," and expressed his opinion that the mutual hostility of the English and the French

¹ "Hansard," Vol. XL., p. 154.

² *Ibid.*, p. 546.

³ *Ibid.*, p. 358.

⁴ *Ibid.*, p. 584.

was at the root of the troubles of Lower Canada. This theory of the rebellion and an attempt to show that the Government had not been caught napping by the rebels, in the matter of troops stationed in North America, practically constituted the whole of his speech. He was followed by Brougham; the ex-Chancellor had never forgiven the ministry, and his merciless sarcasm and irony were never displayed with more zest. He ridiculed alike the past actions and present proposals of the ministry, and Melbourne's reply was quite ineffective. Wellington was all-powerful in the House of Lords, and although he made a show of defending Melbourne against some of the more unfair attacks of Brougham, it only displayed the former's impotence the more. After Wellington, Goderich (now Lord Ripon) and Lansdowne spoke; the former as an ex-Colonial Secretary to express regret for having by an imprudent confidence in the Assembly's good intentions helped on the crisis he sought to avoid; the latter to attack Brougham for having talked for three hours without touching upon the real point at issue.

Then Durham arose and made a most touching speech, full of generous confidence that the patriotism of his opponents equalled his own.¹ He did not wish to take part in the debate, but to address a few words explanatory of the general principles which would influence his conduct in the discharge of the grave duties imposed upon him, and of the reasons which had induced him to accept the trust. He would not go to Canada to support a party, but to assert the supremacy, in the first place, of Her Majesty's Government and to vindicate everywhere the majesty of the law. He would not look upon any part of the Canadians as French, but merely as Her Majesty's subjects, and would defend the rights of all, whether French habitants in Quebec or British merchants in Montreal. He did not think that he would, as some speakers had said, execute a thankless task in carrying out

¹ "Hansard," Vol. XL., p. 240.

with him the measure for the suspension of the French-Canadian Constitution, for it was already *de facto* suspended by the rebellion of the Canadians, and his duty was merely to provide as well as he could for the extraordinary state of affairs thus brought about . . . "Great and dictatorial as these powers are, I shall be anxious to lay them down at the earliest possible time. As far as concerns the principal province it would be wise—and I implore my noble friends to give me the means of accomplishing it—to effect such a kind of settlement as should produce contentment and harmony among all classes, enable me to establish, not temporarily but lastingly, the supremacy of the laws, and finally to leave behind me such a system of government as may tend to the general prosperity and happiness of one of the most important portions of Her Majesty's dominions. If I can accomplish such an object as that I shall deem no personal sacrifice of my own too great. I feel, however, that I can only accomplish it by the cordial and energetic support—a support which I am sure I shall obtain—of my noble friends, the members of Her Majesty's Cabinet, by the co-operation of the Imperial Parliament, and, permit me to say, by the generous forbearance of the noble lords opposite to whom I have always been politically opposed. From the candour and generosity which have distinguished the noble Duke's [Wellington's] remarks this evening, as well as upon all other occasions, I trust that he and those who think with him will give me credit for the good intentions which I feel, and will only condemn me if they find my actions such as shall enable them, consistently with their own consciences, to find fault."

Brougham did not hear this appeal. Feeling unwell, he had left the House immediately after his own speech, much to Glenelg's disgust, as the latter's reply thus remained unheard by him. The new Governor-General knew his foes and his friends alike too well to imagine that he would find forbearance or defence within the walls of

parliament. He was appealing to a wider audience—to the British people and to those over whom he was about to rule. It is impossible to doubt Durham's sincerity, nor were his words the offspring of a vaulting ambition. Having outlined his policy, he wisely employed his remaining time in England in selecting suitable assistants, and in collecting information bearing upon his task. It is probable that he realised only too well the justice of the criticisms which were levelled at the motives influencing the ministry in its appointment of him. However, the Earl felt that the chance of his life had come, and hoped that success would be as beneficial to himself as he meant to be to the unhappy French.

On February 2nd the Bill was read for a second time in the House of Lords. As usual Brougham was in opposition, and the acrimony of his speech was so marked that it stirred up the normally placid Melbourne into something very like a state of excitement. The most remarkable passage in Brougham's speech—in the light of his subsequent conduct—was the splendid word-painting with which he described the successful mission of Pedro de la Gasca to recover Peru from the rebel Pizarros. If it meant anything, it was an assertion that Lord Durham's power was not great enough for his task. On February 5th Roebuck was heard at the Bar against the Bill. This time his speech was less wild and more constructive and had important after-results. On February 8th the Bill passed the third reading, but lengthy protests were entered by Brougham, Ellenborough, and Fitzwilliam.

The purport of this "Act to make temporary provision for the Government of Lower Canada" is as follows: The House of Assembly which was granted to Lower Canada by the Act 31 Geo. III. c. 31 cannot be called together on account of the disturbed state of the province, but to obtain information by which the Imperial Government may be guided to form a suitable Constitution for the province, the Governor-General is to summon delegates from the

Provinces of Lower and Upper Canada, which is also interested in the proposed reforms. In the meantime, to carry on the Government of Lower Canada, the Queen is authorised to suspend so much of the Act 31 Geo. III. c. 31 as orders the calling of a Legislative Council and House of Assembly for Lower Canada, and under the Great Seal or the Signet to commission the Governor-General to call together a Legislative Council for Lower Canada of a number to be settled by the Crown. After the proclamation of this Act, and up to the first day of November, 1840, "it shall be lawful for the Governor of the Province of Lower Canada, with the advice and consent of the majority of the said councillors . . . to make such ordinances for the peace, welfare, and good government of the said Province of Lower Canada as the legislature of Lower Canada as at present constituted is empowered to make." These ordinances, subject to certain appended conditions, were to have like force and effect as laws made by the superseded legislature would have had, provided that they were proposed to the Council by the Governor, and assented to by at least five of the said legislative councillors. The Governor had to transmit a copy of the ordinances thus made to the Queen, who could disallow any of them within two years; certain ordinances were to lie on the table of parliament for thirty days, as they would have done had they been made under the Act 31 Geo. III. c. 31.

The remaining clauses in the Act are comparatively unimportant, but it is necessary to say something of a document which was issued to members during the passage of the Act. On Wednesday, January 23rd, appeared the "Instructions to Lord Durham." These were an extract of a dispatch from Lord Glenelg to the Earl of Durham, and dated January 20th. It was remarked that the issue of these Instructions before Lord Durham had sailed, or even before the Bill had passed, was somewhat unusual, to say the least; but the Melbourne Government were straining every nerve to pass the Bill, in the teeth of many of their

own supporters, and wished to make it plain that they sought, at any rate, to create a liberal despotism.

The Instructions in the first place pointed out that legislative action by the Imperial Parliament would probably be necessary, not only to compose the difficulties in Lower Canada, but also those at issue between Upper and Lower Canada. To find out the real wishes of the colonists, Durham was authorised and advised to form a sort of provincial convention. No time was fixed for this meeting, but it was suggested that three members should be chosen from the Legislative Council of Upper Canada, and ten others elected by the Assembly of that province. In Lower Canada the matter would be more difficult; three members of the old Legislative Council could be chosen, but, as the Assembly was *de facto* non-existent, the five districts of Lower Canada should choose two members each. An obscurely worded sentence seems to suggest that if the French would not elect suitable persons, or refused to take part at all, Durham should appoint the members himself. Over this Council of twenty-six Durham was to preside, and its authority was limited to giving the Governor advice, when asked. Then followed a list of suggested subjects for the Council to discuss. The great question was that of the regulations governing commerce, for its geographical position placed the Upper province at the mercy of the Lower. The possibility of a federal union of the two provinces is hinted at, and Durham is requested to investigate the matter. Another question was the future continuance of the Constitutional Act of 1791. Its defects were recognised at least in the case of Lower Canada, and Durham is asked to suggest a means of making the Legislative Council more worthy of the public confidence, as the Imperial Parliament had suggested, although it repudiated the claim of the Assembly that it should be elective. After instancing the matter of the civil list, the land tenure, a tribunal of impeachment and a Court of Appeal, as being also in need of investigation, Glenelg

suggests that Durham shall draft measures for the Imperial Parliament dealing with these questions, and concludes by giving him ample authority to deal with the Council as seems best to him.

The new Governor had received his orders, but it was not till March 31st that letters patent issued, creating him High Commissioner "for the adjustment of certain important questions depending in the said provinces of Upper and Lower Canada, respecting the form and future government of the said provinces," and also Governor-General of the British provinces of North America. He had, however, "kissed hands" on his appointment on January 20th, and devoted his attention to selecting capable assistants. Unfortunately, perhaps, Durham took little account of qualities other than intellectual, and he had enemies on the look-out for points on which to attack him. Durham's friends were not very discreet, and allowed the Opposition papers many opportunities. *The Times* was especially bitter, not only because it opposed Durham on personal grounds, but because he was zealously championed by *The Morning Chronicle*, its great rival, of which the editor was John Easthope, the Radical M.P. and friend of Durham. On March 10th Glenelg received a letter from Durham giving an approximate idea of the establishment he proposed to take with him. As the result of a question in the House, Glenelg asked Durham to draw up a paper containing more details. As the minister laid no restrictions on him, Durham concluded, naturally enough, that he was to have a free hand in this matter also, and in his reply enclosed a memorandum of an establishment on a scale which was so lavish that he thought it required an explanation; in view of the magnitude and importance of his task he would need the most zealous and efficient co-operation, and he felt it due to his assistants that they should have the most adequate and honourable remuneration. He justified also the nomination of four paid and four unpaid aides-de-camp by the necessity of reliable

means of communication with the various Lieutenant-Governors. He put no salary down for himself or his private secretary—that had been part of the terms he had insisted on when he accepted the post—but the Chief Secretary was to have £1,500, a legal adviser the same sum, a military secretary £700, and two assistant secretaries or clerks £600.

Hitherto the attacks on Durham had been confined to sneering allusions to the magnificence of his preparations, to the number of his household, and to the gold and silver plate he had sent to a goldsmith's to be valued for insurance. On April 3rd the Marquis of Chandos—the author of the Chandos clause of the Reform Bill—proposed a resolution which only could have for its object the annoyance of Durham. His love of display was well-known, and Chandos proposed a resolution which, under cover of zeal for economy, proposed to limit Durham's expenses to those of the Earl of Gosford. This sum was only £12,678, and Gosford's duties were far less important than those of the new Governor. Not content with the resolution, the Marquis proceeded to attack the appointment of Lord Durham, which he characterised as a "job"; the ministry had desired to remove the Earl to a distant region where he could not inconvenience them. After some debate, the resolution was lost by two votes. Had it been carried, it would probably have achieved its end—the resignation of Durham. As it was, the Earl felt hurt, but a foolish refusal to dine with Bingham Baring, because of his vote in the House, brought much ridicule upon him.

The Times and the other Tory organs redoubled their attacks, and the memorandum which Durham had furnished of his establishment provided them with a splendid weapon. It had provided for a legal adviser at £1,500, and rumour soon had it that the post was destined for Thomas Turton. Turton was a member of the Calcutta Bar, and not without ability. He had been a schoolfellow of Durham, and was at this time in London on a mission

from India. Hobhouse, who was a friend of Durham's, introduced Turton to the Governor, and the latter seems to have promised Turton the post as an act of kindness. Unfortunately, Turton had appeared before the House of Lords about four years before in connection with a very painful scandal, and when the news of the appointment got out Melbourne was alarmed. He told Durham plainly that he could not consent; the Earl, however, felt that he had pledged his word, and he knew that the opposition was not based on any zeal for morality. Durham, too, seems to have been misled as to his power to make and revoke the appointment, but after two days he agreed that Turton should go out as his private friend only.

Another man to whom Durham had promised an appointment was the famous Edward Gibbon Wakefield. Durham had come into contact with him in connection with a scheme for colonising New Zealand, and was a pupil of Wakefield and Molesworth in colonial matters. Like Turton, Wakefield had a past. He was, however, a far abler man, and the appointment of Wakefield could be more easily justified. As he received no definite position as yet, he attracted little attention. The other appointments were unexceptionable, especially that of the brilliant Charles Buller, pupil of Carlyle, and Radical M.P. Buller, Wakefield and Durham each possessed different yet complementary gifts, and were bound together by common interests and personal affection. Turton was not one of the inner circle, and his presence, to which so much evil can be traced, was only due to Durham's chivalry.

If the Earl of Durham did not possess the gift of originality, he was an apt pupil, and could improve upon the ideas of others. It has been mentioned that Roebuck's speech before the House of Lords was rather more constructive than usual. He there outlined a plan he had often urged before for the government of Canada. It was little more than a suggestion, but to Durham that was enough. It was the Earl's object to win the support of

the Radicals for his policy. He did not know Roebuck personally, but they had a common friend in Molesworth, who with Hume and Roebuck had taken part in a meeting of the "Friends of Canada" at the headquarters of the Westminster Reform Association—the "Crown and Anchor." Molesworth and Hume opposed the Bill for suspending the Lower Canadian Constitution, but they both, as has been said, supported Durham's appointment.

On March 6th Molesworth made a slashing attack on Glenelg's administration of colonial affairs. His views were those of Durham—the policy of "ships, colonies and commerce." Hume defended Durham when Chandos moved his Resolution on April 3rd, and this is perhaps the best guide we possess as to the date of the famous meeting between Durham and Roebuck.

Roebuck's version¹ is that shortly before the Earl left for Canada a hint was given that he should call upon the Governor and explain at length his views on the subject of the government of Canada. It is more than probable that the hint was given by Molesworth, but Roebuck says he refused to take it. He professed, however, to be willing to afford Lord Durham the desired information if the Governor chose to invite him to call. Durham saw the advantage he might derive from having the *imprimatur* of Roebuck for his mission. Roebuck was a Lower Canadian by birth, on friendly terms with the French leaders, and possessed of information as to their wishes by virtue of his position as Agent for the Assembly in England. Charles Buller was sent to interview Roebuck, and he agreed to call on Durham. It is amusing to read of the Agent's virtuous indignation when Durham proposed that he should take up a position on the borders of Canada, but in the territory of the United States, and correspond with him there. Perhaps Durham and Wakefield had already worked out their plan for conciliating the French, and intended to use Roebuck as a means to obtain touch

¹ See his "Colonies of England," pp. 120 *et seq.*

with Papineau, who was also at this time hovering about the frontier.

Although he refused to agree to Durham's wishes in this matter, he professed himself willing to give advice, but only openly, as "secrecy was foreign to his nature." We can imagine the scene—Roebuck pouring out a flood of theoretical propositions as to the way in which the Canadians should be given all they wanted, and at the same time the power of the Crown secured. Durham listened politely and then asked Roebuck if he would put his views on paper. Durham had found the weak point in his opponent's armour—his desire to secure his recognition as Agent for Lower Canada, which had hitherto been withheld by the Imperial Government. From other sources it seems likely that Roebuck assured Durham of a favourable reception from the French in Canada, contingent on his following out the Agent's recommendations. Roebuck went home and drew up a document which is worthy of a short description. At his request Durham only retained a copy. Roebuck says that Durham gave him the strongest assurance of his most sincere approval of the scheme; and it is certain that it was a scheme closely modelled on this that Durham tried to carry out in Canada. His realisation of the actual wishes of the colonists, and a certain practical sagacity which taught him to prefer the expedient to the desirable, went to produce the imperfect scheme he finally proposed.

N.B.
Roebuck's plan was based on two premises—that the extent of the proposed reforms should only be limited by the extent to which the Imperial Parliament would go; and that the supremacy of England and the well-being of the colony are perfectly compatible. Its objects were to evolve a Government capable of producing contentment and happiness, and also a scheme for federating British North America. These two are interdependent. Roebuck's scheme seems to have been really the result of much thought on his part. The idea of federation, however, was not

wholly his own, for William Lyon Mackenzie, in Upper Canada, had advocated it (together with many other things), and Uniacke, a lawyer from the Maritime Provinces, had contributed somewhat to making the idea familiar. Chief Justice Sewell, of Lower Canada, had corresponded with Edward, Duke of Kent, Queen Victoria's father, on the question, and later¹ showed Durham an autograph letter from the Duke written in 1814. The difficulties, mainly of distance and want of population, seemed so insuperable, that the Duke finally declared against it, and the English Government, as will be related in due course, preferred the less ambitious scheme of the Montreal merchants—the union of the two Canadas. In 1822 Roebuck himself wrote an able pamphlet in support of this scheme, but when he became Agent he changed his opinions. To everybody it was plain that one or the other plan must be adopted, and a beginning had been made by the union of Nova Scotia and Cape Breton. Naturally the French Canadians preferred to govern their own province, even with powers limited by a Federal Legislature, and we can understand that Durham would look with favour on their views.

The really original part of Roebuck's scheme referred to the two Councils. After the vote on Lord John Russell's Resolutions of March, 1837, Roebuck saw that the Legislative Council would not be made elective, and as one of the chief complaints was that it merely echoed the opinions of the Executive Council, he boldly proposed to abolish it altogether, and, as was the case in some of the provinces, have only an Executive Council. To the Executive Council, consisting of not more than five members, he assigned only powers of revision. It might alter a Bill from the Assembly or amend it, but could not reject it, and all Bills were to be sent back in a given time. This was in itself a tremendous revolution; for if, as Roebuck undoubtedly wished, some system of responsible government was to be introduced, the Assembly would command

¹ See Report, p. 236.

two of the three parts of the Legislature and all that Papineau asked and more would be granted.

To the Assembly Roebuck assigned large powers. Elected by ballot, a delicate compliment to Lord Durham, it should sit for three years without a dissolution, but it could only adjourn one week at a time. The whole of the provincial revenues were to be surrendered to the Assembly, which was to grant a Civil List. Roebuck hints quite as strongly as Durham does in the Report, that after all the Mother Country has no right to expect a revenue from the colony, and that in giving the colony good government, and in consenting to be responsible for their acts to the colony, statesmen were only doing their duty. Curiously enough Roebuck would strengthen the hands of the Governor, who is to be appointed by the Crown, and although his salary is to be settled by the Assembly it cannot be altered for six years, the executive councillors to have a similar tenure of office, but to be appointed by the Governor. The Governor might convoke extraordinary meetings of the Legislature, and might send down communications concerning the condition of the province, either voluntarily or when asked for information by the Assembly. He is empowered to assent to or reject Bills without showing any cause, and he may also reserve Bills for the approbation of the Colonial Secretary. The scheme seems very plausible, but would not work well; with responsible government and control of the supplies the Assembly would find that the Governor had too much power; without responsible government, it is difficult to see how deadlocks could be avoided, for the Assembly in Lower Canada would instantly refuse supplies if the Governor rejected its Bills. It is remarkable that Roebuck seems to presume that the revenues will be collected by the Provincial rather than by the Federal Government. His scheme as to this latter is not well thought out. At one time he favours the system of the United States, but again he provides for the appointment of the Lieutenant-

Governor by the Crown. He would rigidly define the powers of the federal authorities.

A large portion of Lord Durham's Report on Lower Canada is taken up with an analysis of the legal system. Its defects are pointed out by Roebuck freely enough, although he hints that it seemed all Cherokee to Durham. However, if Durham did not understand, others did. Roebuck proposed that a commission of experts should be appointed to revise and ascertain the existing law in Lower Canada, regardless of the interests and wishes of the lawyers. It was necessary to form an efficient judiciary and court of appeal, and he suggested that the judges should be appointed for a fixed time and be liable to impeachment.

This meeting with Roebuck and the matter of his advice have been gone into thus fully because it seems to afford a clue to much that is otherwise hard to understand in Durham's proceedings in Canada. The Earl thought he had secured at least the neutrality of those Radicals who did not support him, and he looked forward to a reception even from the Papineauists the reverse of unfriendly. It is certain that both Wakefield and Buller left England with a firm belief that the French had real grievances against the authorities, and just before Durham sailed he informed a deputation of Montreal merchants that every argument they had brought forward only served to confirm his opposition to their favourite project of a union of the two Canadas. The whole of Durham's stay in Canada was one process of bitter disillusionment. He found himself betrayed by everybody in turn, and at last his only supporters were the British of Lower Canada. Upper Canada and the Maritime Provinces gave him fair words, but would have none of his schemes. It is clear that he never anticipated the difficulties he was to meet with in Canada. He looked upon his task as merely to build on a foundation already rising on cleared ground. He told¹ the ministry before his

¹ See Report, p. 3.

departure that he would submit a scheme for the future government of British North America in time for it to be presented to parliament in the ensuing session ; Charles Buller was to take charge of the Bill and be ready to explain its provisions, and Durham himself was ready, if necessary, to take a flying trip across the Atlantic, to back up his recommendations in the House of Lords. His conversation with Roebuck had made it quite evident to him that immediate action was necessary, and to a man of Durham's political views a breach of continuity with the past colonial system of Great Britain was a light matter. He sailed in the *Hastings* on April 24th, accompanied by his wife and children. Many of his suite, including Buller and Turton, went in the same ship. Wakefield reached Canada some time afterwards.

When Durham left for Canada he had just completed his thirty-sixth year. He had never enjoyed robust health, and suffered at times from indigestion, and later from rheumatism. Few men ever evoked more enthusiasm or more hatred. He was chivalrous, high-minded, enthusiastic, generous, hospitable, and with a transparent sincerity which often exposed him to the attacks of men less conscientious than himself. Firmly convinced of his own rectitude of purpose, he could ill brook the restraints of an antiquated custom or an inconvenient law. To him law was the servant, not the master, of the State, and when men used it to defend oppression, or what Durham held to be an abuse, all the flaws in his character helped to blind him to his true course of action. Durham could not endure opposition, for he could never understand that there might be a different point of view from his own. He was utterly wanting in tact or thoughtfulness, and his natural irritability was increased by his malady. He never sought to convince an opponent by smooth words, for it seemed to him a paltering with injustice. To his equals he was arrogant when he only meant to show himself independent ; to his inferiors he was condescending so long as they

proved submissive. He was a man to inspire deep hatred or enthusiastic affection. Those who knew him best—Buller, Wakefield, and the leaders of the Radical party—loved him, because they saw of necessity only the good side of his character, and knew how unjust was the persecution he endured from Brougham. To his fellow-ministers Durham could not be attractive. We can see from the memoirs of the time with what suspicion he was looked upon by them. He was Earl Grey's son-in-law, and so, perhaps, his outbursts of passion were to the Prime Minister no new thing; to the rest, however, such childish behaviour was distasteful, and Durham's extreme opinions seemed only too like a bid for popularity; they were becoming more unpopular every day, while Durham, who had never given the least reason for it, according to them, was hailed by all as the coming leader of the Radical party. Even in Canada he did not restrain himself; he raved with equal vehemence Charles Buller, who spilled a cup of coffee on a *Westminster Review*, and an unfortunate waiter at Niagara who unthinkingly appeared before the Lord High Commissioner in his shirt sleeves. Durham would have made an excellent satrap in some Eastern land; it was his destiny to be the representative of a constitutional monarch in a land whose wounds cried out for the knife.

With good reason do the Canadians cherish the memory of Lord Durham to-day; while he lived a strong party in Canada decried him. It was because he dared to maintain, Radical though he was, that there was something more holy than the wishes of an elected Assembly, much more so than those of a Government House clique. When Lord Durham ceased to be a politician we see his true greatness as a statesman. His Report is the Magna Charta of the Dominion whose success is bringing about results to the Empire we can yet foresee but dimly; we only know that there is a wider citizenship than that of a race merely bound together by ties of blood. Durham as an administrator was a failure; granted, but, though he himself could

not govern, he could point to the true secret of success for Governors. At a time when men were openly talking of schemes for getting England rid of the burden of Empire, Durham taught a nobler policy. "Emancipate your colonies" was "Citizen Bentham's" advice to the French Republicans. Durham said: "Trust your colonial fellow-subjects with the same rights as you claim for yourselves, now in 1839, not as Lord John Russell proposed, at some remote date in the future." Durham converted Russell, and sank his own differences with the ministry to keep his promises to the Canadians. Men who had spoken with Durham heard Etienne Taché say at Montreal: "The last gun in defence of the English power in America would be fired by a French Canadian."

CHAPTER II.

THE CESSION OF CANADA AND THE TWO CONSTITUTIONS.

To understand the difficulties which Lord Durham was sent to compose a sketch of the history of Canada from its cession is necessary. Lord Durham's task was no light one. The only thing on which its population agreed was the necessity for an alteration of the existing state of affairs. At that time the provinces composing British North America were six in number—Upper Canada, Lower Canada, Nova Scotia, New Brunswick, Prince Edward Island, and Newfoundland. Each province possessed a Legislature, consisting of a Lieutenant-Governor, a Legislative Council, and a Legislative Assembly. The members of the Legislative Council and the Executive Council, a sort of advisory Privy Council, composed of the chief officials of the province, were nominated in theory by the Crown, actually by the Lieutenant-Governor, or those who ruled in his name. Very often the members of the Executive formed a majority, if not the whole, of the Legislative Council, and as the latter body had to accept the proposals of the Assembly before they were submitted to the Governor, it formed an effective check on the Assembly. The executive councillors were practically irremovable; they were actually responsible to nobody, certainly not to the Assembly, and in all the provinces the system worked equally badly. As population increased, and fresh settlers flowed in from England, especially between 1815 and 1835, these differences became acute, for many of the newcomers were imbued with the Radical doctrines then so prevalent among the English middle and lower classes. In their new

homes they soon secured control of the Houses of Assembly, which were elected on a liberal franchise, but only to discover their helplessness under the colonial constitutional system. Economic causes—in the Maritime Provinces the approaching termination of preferential treatment for their timber—contributed largely to this universal feeling of discontent, and in Upper and Lower Canada outbreaks occurred during the winter of 1837-8. In the Maritime Provinces the intensely British character of the people prevented the agitation for parliamentary reform taking a violent turn, but the majority of the population in Lower Canada were descendants of the original French settlers, and in Upper Canada the American element was strong. The seat of the Governor-General of British North America was at Quebec, in the province of Lower Canada. There the trouble was most acute. It may be mentioned in passing that the post of Lieutenant-Governor of Lower Canada was often held as a sinecure; the Governor-General, as a rule, confined himself solely to the administration of the Lower province, and his authority over the various Lieutenant-Governors was very small.

Lower Canada had remained a French province from its foundation at the beginning of the seventeenth century till its capture by the English in the Seven Years' War. It was formally ceded by the French at the Treaty of Paris in 1763. Its population at the time of the conquest has been variously estimated. It was probably about 60,000. Immigration from France had been rare for some time before its capture by the English, and the inhabitants were mainly the descendants of the 8,000 peasants from Northern France planted there by Colbert. To encourage the settlement of the country, broken-down noblemen, half-pay officers, and various hangers-on at the Court were given "seigneuries," that is, feudal estates on the model of those in France. The peasantry, half-starved and oppressed by the heavy war taxes and the various feudal dues, went willingly to this new land. They received from the

seigneurs farms under the "customary" tenure known as the "Custom of Paris," and the dues they owed to their lord, troublesome as they became later, were light compared with the taxation they had undergone in France. As the natives were cruel, and good fighters, the estates were laid out in long narrow strips, seldom exceeding a mile in width, so that each man might have a river frontage to give him a chance of escape.

In later years the French, under the influence of Papineau, entertained very rosy views of their status under the old *régime*. As a matter of fact, although the sway of the Intendant was indeed regulated by custom, the colony was administered strictly in the interest of the Mother Country. Religiously the inhabitants were well cared for. At Montreal was the great house of the Sulpician Fathers, a branch of the Franciscans, and at Quebec the Jesuits were supreme till the suppression of their Order in 1773. These two Orders had control of the education of the country, but except as far as it related to candidates for Holy Orders, it seems to have been of a very elementary character. Constant wars with the Iroquois and with the English settlers, who were pushing into the valley of the Ohio, had made the "habitant" a skilful and daring fighter. He was, however, at heart a simple, kindly man, devout even to superstition; he still retained the old traditional French courtesy, and, it must be confessed, his old conservative habits. He knew nothing of scientific agriculture, and used the same cumbrous plough as his great-grandfather; but so long as new land was plentiful, and there were no English, with their enterprising but inconvenient methods, the habitant was content to keep in the old paths.

The Church encouraged early marriage, and so he was moral. Large families were common, but the people, attached to their religion, refused to colonise the waste lands at the back of the seigneuries. They became poorer year by year; no matter, so long as they could go to Mass

each Sunday. As has been said, education was defective. Large estates were given to the Jesuits, but these were rendered useless for their original purpose of supporting schools, for they escheated to the Crown on the suppression of the Order by the Pope. Repeated attempts were made by the Assembly in later years to secure their return to their original use, but in vain. In 1800 an attempt was made to apply them to the foundation of common schools, but the English and Protestant element in the scheme wrecked it. It was not till the British North America Act restored French influence in Quebec that the Jesuit estates question was settled. Then, in the year 1888, thanks to Jesuit influence, the Provincial Parliament voted the Order \$400,000 compensation.

Canada passed into the hands of the English on the fall of Montreal in 1760. The French leaders struggled hard for terms which would have confined English authority over Canada to that of a mere military protection, but in vain. The free exercise of their religion was guaranteed to the inhabitants, and all communities of religious, and all the monastic Orders, with the exception of the Sulpicians, Recollets and Jesuits, were promised secure possession of their goods, constitutions, and privileges. The claims of these three Orders, as well as the right of the clergy to tithe, were to be referred to the King of England. On February 10th, 1763, the Treaty of Paris was signed. France finally abandoned all claim to North America, and received certain fishing rights and two small islands. The King of Great Britain was to allow the Canadians the free exercise of their religion, "as far as the laws of Great Britain permit," but nothing was mentioned about the legal system which was to prevail henceforth in Canada.

The period from the conquest to 1774 is known among the French Canadians as the "Rule of the Soldiery." The term is eloquent as to the condition of the country. General Murray, who was left in charge, seems to have been an impartial man, and he possessed a very bad

opinion of those of his countrymen who had flocked to the new colony in answer to a proclamation by the King. This proclamation gave power to the Governors of the various colonies to summon assemblies as in the older provinces, and courts of law and systems of judicature were to be established as near as possible to the English pattern. A rough system of organization was established in the chief towns of Lower Canada, but it was only a modified form of martial law, and the natives preferred to settle their disputes before arbitrators. General Murray resolutely refused to call an Assembly, for the necessity laid on the members to accept the oath of supremacy and the declaration against transubstantiation virtually disfranchised all but the men whom the Governor, in a letter to Lord Shelburne, described as "men of mean education, traders, publicans, mechanics, and followers of the army."

In 1766 Murray was succeeded by Sir Guy Carleton, afterwards created Lord Dorchester for his services. In his time Canada received her first Constitution, the Quebec Act of 1774 (14 Geo. III. c. 83). The trouble in the older colonies was assuming a threatening aspect. It was necessary to conciliate the French population, and therefore the operation of the Test Act was suspended in Canada, and the civil law was henceforth to be the old "Custom of Paris." It was considered doubtful whether the French population of Canada desired an Assembly, and a nominated Council was appointed instead, to advise the Governor. This Act was passed in the teeth of opposition, both in England and America. It did not satisfy the new settlers in Canada, who claimed to enjoy English law under the proclamation of 1763, nor did it please the fanatical Puritans of New England or the political leaders of the coming rebellion. The former saw with distaste the acknowledgment of Roman Catholicism, the latter were angry at the loss of territory they had marked as their own. Burke thundered against the adoption of the

barbarous French civil law, and Fox saw nothing but evil in the refusal to grant an Assembly.

In the light of history we can sympathise with Burke's denunciations. It was undoubtedly a foolish step to thus sanction the idea of a separate nationality. Unless immigration into Canada was to be practically forbidden, trouble was bound to ensue when the energetic Englishman found his labour made harder and the tenure of his possessions less sure by an alien and antiquated law. In 1763 the Canadians were not a nation, and their life under French rule fitted them to receive the impress from above of a new scheme of social and political life. An able man, by conciliation where possible, and by strenuous endeavour not to touch permissible prejudices, might have gradually moulded the new subjects into a fair resemblance to Englishmen. Unfortunately, the quarrel with the older colonies began the moment danger was removed from the north, and the various ministers from 1760 onwards were too busily engaged in that quarrel to give serious attention to the Canadian problem. Having alienated their fellow-Englishmen on the Atlantic sea-board of America, Lord North and his friends had to surrender to the demands of the French if they wished to prevent Canada from accepting the "freedom" the Republicans offered her.

Carleton had his way, and the interests of any possible English population in the future were sacrificed in an attempt to repair somewhat the bad statesmanship of Lord North. It was successful. Remembering the denunciations of the New Englanders when their religion was guaranteed to them by the Act of 1774, the Canadians turned a deaf ear to the protestations of friendship now made by Congress. Even Franklin visited Canada in vain. The priests had been conciliated, the notaries and seigneurs saw in the Quebec Act a guarantee of their own influence, and the habitant followed his leaders. Only among some of the English settlers could the American offers obtain consideration. Carleton was popular, and, although he

received little help from England, he fairly held his own against the Republican invaders. Piqued at the selection of Burgoyne to command in the famous Saratoga campaign, he returned to England. During the next few years General Haldimand governed Canada. Nominally the Quebec Act was in force, but the French historians complain of the iron hand of the new Governor, and of his imprisoning men on mere suspicion. Perhaps the Constitution of 1774 would have been a success had the stream of British immigration not been diverted from the older colonies by the peace of 1783. Carleton might have developed in the French of Lower Canada a feeling of loyalty to the English Crown from mere gratitude at the scrupulous regard for their feelings, but with the coming of the United Empire Loyalists all was changed. In 1838 Lord Durham diagnosed the trouble in Lower Canada as "two nations warring in the bosom of a single State." He was not far wrong, although perhaps the aims of the majority were for economic rather than political reform.

Despite the blunders of the ministry and the incompetency of her generals, England had many active partisans in the revolted colonies. These had fought on her side in the war, and after 1783 the United States could no longer be their home. Some were formerly men of wealth—Governors and State officials—others simply colonial farmers, but all alike had lost their possessions, and were dependent on the charity of the British Government. They colonised the Maritime Provinces, and overflowed into Canada. Most of the available land on the banks of the St. Lawrence was in the possession of the habitants and their seigneurs. The newcomers had little inclination for city life, and, pressing westwards along the north shore of Lake Ontario, colonised the rich alluvial lands of the Peninsula of York. Haldimand did his best for them, but their life was hard. Even in 1787 the new settlers could not depend on the produce of their farms for food. In the older colonies they had been accustomed to

meet in the Assembly and devise measures for the amelioration of their difficulties; in Canada the only legislative body was the nominee Council. Some of its members were French, and the English members were generally placemen, and powerless against a strong Governor, although constitutionally his advisers. The United Empire Loyalists, as they were called, loudly demanded the rights they had enjoyed in their old homes, and the French were not altogether satisfied now with the Quebec Act as it was worked. Most of the higher judges and officials were English, and were only slightly acquainted with the civil law, even when they did not calmly ignore it altogether.

In 1786 Carleton returned to Canada as Governor. The British ministry saw that some new scheme of government must be devised for Canada; otherwise there was no hope of saving it from the new Republic on its southern borders. The British at Quebec and Montreal were delighted at the influx of the Loyalists, and again preferred their claim that an Assembly should be established to represent the Protestant population only. They looked with alarm on the scheme of the Loyalists that they should have a separate Constitution for a new province in the west. As a last resort, they asked that the Protestant population alone might be represented in the British House of Commons. Carleton's position was no enviable one. All his former plans were impossible, if instead of a strong French element, he had to see an increasing number of British settlers in Lower Canada; the Quebec Act with its system of government by Council was manifestly unworkable.

Largely as a result of his representations the Constitutional Act was passed in 1791 (31 Geo. III. c. 31). It seemed a fair solution of the conflicting claims of the two nationalities to divide up the province, giving each half a Legislature in which one race would be supreme. There were practically no French in Upper Canada, but the population of Lower Canada consisted partly of British.

It is impossible now to decide on the exact proportion. Perhaps, at the time of the rebellion in 1837, Mr. Kingsford's estimate that the ratio was as three to one is fairly accurate.¹ In earlier times the English-speaking population was not so numerous, but even then, in wealth and commercial enterprise, it was far more important than the French. In the person of Adam Lymburner, a merchant of Quebec, the British of Lower Canada protested vigorously against this abandonment of their interests to the French majority, and ridiculed the claim of the small population in the new western province to self-government. All protestations were useless, and the Bill became law.

This Constitutional Act (31 Geo. III. c. 31) is worthy of a somewhat detailed account. It was an honest attempt on the part of Pitt to satisfy the claims of two conflicting nationalities. He thought the solution was to give an exact copy of that Constitution which worked so well in England; he knew very little about the actual condition of affairs in Canada, and it is doubtful whether the claim of the colonists to responsible government in the modern sense was ever thought of. The Whig theory of the balance of opposing forces in the State which made for stability was held just as firmly by Pitt as by Fox, and the only instance of an Assembly claiming to be master of the Executive was the product of the French Revolution, then in its infancy.

The reason alleged for the repeal of the Quebec Act was the unsuitability to the changed condition of affairs in Canada of the provision that the Governor and Council should make the laws; this was repealed, and all laws in future, consonant with the powers granted under this Act, were to be made "by the Governor (or Lieutenant-Governor), with the advice and consent of the Legislative Council and Assembly," of each of the two new provinces. The King could authorise the Governor, under his sign-manual, to summon under the great seal of the province a

¹ Kingsford, "History of Canada," Vol. IX., p. 518.

sufficient number of discreet and proper persons to sit in the Legislative Council. Seven was the minimum number in Upper Canada, and fifteen in Lower Canada. Additional members could be added as the King directed, but all members must be over twenty-one years of age, and either natural-born or naturalised British subjects. The seats were to be held for life, and although advantage was never taken of the power thus conferred, the King might create a colonial nobility, whose members could demand a writ of summons to the Legislative Council. The Speaker of the Legislative Council was to be appointed and could be removed by the Governor.

Elaborate rules were given for the convocation of the Assembly. The King was to authorise the Governor to convoke it, and by proclamation to divide the provinces into electoral districts. Sixteen members in Upper Canada and fifty in Lower Canada formed the minimum allowable in the new Assemblies. The franchise was extraordinarily liberal. In the country districts of Quebec a forty-shillings freehold, or its equivalent in any other tenure, gave the right to vote, while in the towns the elector must possess a dwelling-house value £5, or rented at £10 after a tenancy of at least one year. No member of either provincial Council, and no clergyman of any denomination, were eligible for election. The Assembly was to be called together at least once every twelve months, and was not to continue longer than four years. The Governor, when a Bill had passed both Houses, could either accept or reject it, or he might reserve it for the signification of His Majesty's pleasure. Even when the Governor assents to a Bill he must transmit a copy home, and the Bill could be disallowed at any time during the next two years. All laws in force in 1791 were to continue, unless repealed by this Act or by a subsequent vote of the provincial parliament. The provision under the Quebec Act for a Canadian Court of Appeal, consisting of the Governor and the Executive Council, was continued ;

from this Court an appeal was allowed to the Privy Council as before.

The sections relating to the religious question are very important. The Quebec Act allowed the tithe from lands owned by Roman Catholics to be paid as usual, but the tithe from Protestant settlers was to be paid, according to orders sent to Sir Guy Carleton and Governor Haldimand, to commissioners for the support of a resident Protestant clergy. This scheme, so far at least as it related to lands held by Protestants, does not seem to have been a success; perhaps the fact that many of the settlers were Presbyterians or of non-Anglican sects may account for its failure. Section 36 of the new Constitution orders that one-seventh of all grants henceforth made from the Crown lands shall be set apart in each township or parish "for the support of a Protestant clergy"; this condition is essential to the validity of all future grants. According to sec. 37 "all and every the rents profits or emoluments" which may at any time arise from these lands shall be applicable solely to the maintenance and support of a Protestant clergy within that province where the lands are situated, "and to no other use and purpose whatever." The next section gave the Governor power to erect, with the advice of the Executive Council, one or more parsonages or rectories in each township, "according to the establishment of the Church of England," and to endow them with the lands allotted in this particular township or parish under sec. 36. The holders of these rectories or parsonages were (according to sec. 39) to be presented by the Governor, and to be subject to the jurisdiction of the newly-appointed Bishop of Nova Scotia (sec. 40). They were to have "all rights, profits, and emoluments, thereunto belonging, as fully and as amply as the incumbent of a parsonage or rectory in England." Section 41 gives to the provincial Legislatures a right to repeal or modify these and former provisions touching religion, but the King has no power to assent to any provincial Act respecting the

status and endowment of the Church of England in Canada, until the proposed measures have lain before parliament for thirty days without any objection being raised. In the Constitutional Act there is no express mention of equality for Roman Catholics and Protestants, but that equality is tacitly secured by the wording of the oaths in secs. 24 and 29. However, sec. 5 of 14 Geo. III. c. 83, asserting the King's supremacy under *Primo Eliz.*, was not formally repealed, but the alternative oath for Roman Catholics, given in sec. 7 of the Quebec Act, appears in sec. 29 of 31 Geo. III.

The only other important provisions of the Act are those relating to land tenure and commerce. By sec. 8 of 14 Geo. III. it was enacted that recourse was to be had to the laws of Canada to decide questions touching the ownership of land, except where such laws were varied by enactments of the Governor and Council. This recourse to the Feudal Law did not affect lands already granted or to be granted by the King "in free and common socage" (sec. 9), and wills could be made either according to the French or the English form. Naturally the United Empire Loyalists of the west objected to feudal tenure, and therefore, by sec. 43 of the Constitutional Act, all lands in the new province of Upper Canada were henceforth to be granted on the English tenure only; grants made on feudal tenure in the now separate Upper Canada, prior to 1791, could be transformed on petition into holdings on English tenure (sec. 44). In Lower Canada it was still possible for a settler to get a grant in free and common socage, but it was henceforth to be subject to such alterations, as to its nature and consequences, as the Provincial parliament might determine with the consent of the King.

Section 46, which relates to the commercial relations between the colonies and the Mother Country, is both interesting and significant. It recites the purport of an Act passed in 1778, during the height of the struggle with

the revolted colonies. The Act 18 Geo. III. c. 12 promised that the parliament of Great Britain would not impose any duty, tax, or assessment whatever, payable in any of His Majesty's colonies, except only such duties as it may seem expedient to impose for the regulation of commerce, the net product of such duties to be always paid and applied to and for the use of the particular colony. It is necessary for the general benefit of the British Empire that this power shall still be retained, and therefore nothing in 31 Geo. III. c. 31 is to be taken as preventing the King from regulating the commerce between Upper and Lower Canada, or between either and Great Britain or any other colony or foreign State. However, the net produce of all dues so levied shall be only disposed of at the will of the Legislature of the province.

The speeches of those who took part in the debate on the Constitutional Bill are well worth reading. Pitt introduced the new Constitution as a panacea for the disputes between the old and the new settlers. They could make what laws they pleased in their new Assemblies. He did not conceive that the new Constitution favoured the growth of French nationality in Lower Canada. He said that any attempt to establish a French nationality in Lower Canada would incur the enmity not only of the United States but also of our own colonies. Both Burke and Fox took part in the debate, and it was then that the famous quarrel between them occurred. The French Revolution had driven every Liberal idea from Burke's head, and he could only see in the proposed Constitution an unwelcome following of French rather than British ideas. Fox was, as usual, much more advanced than his colleagues. He seems to have favoured a united Canada, in contradistinction to Burke, who wished to leave each race supreme in the part where it had a numerical majority. Fox foresaw the difficulty which would arise when the unprogressive French Canadians by sheer force of numbers controlled the wishes of the energetic British in Lower Canada. He took

exception also to the proposed constitution of the Legislative Council. He maintained that, valuable as an aristocracy was in an old and settled country, the proper materials for a stable hereditary Upper House were wanting in Canada. He proposed that the Legislative Council should be elective, but with a higher property qualification, both for members and constituents, than was the rule for the Assembly. The time was not yet ripe for the elective principle to be applied to both Houses, and it was never intended that the new Legislature should be able to defy the Crown. Were the Legislative Council also an elected body, the Governor's veto might chance be too frequently needed; so long as the revising Chamber was controlled by the Governor, obnoxious measures could be killed without the official opposition becoming too marked.

Reading the Constitution of 1791 in the light of its subsequent history, we are tempted to ask if its authors seriously expected it to be a remedy for the troubles of Canada. It is worthy of Abbé Sieyès and his master Napoleon. The appointment of the Governor remained with the Colonial Office, to whom alone he was responsible. The Executive Councillors were supposed to advise the Governor, but a strong man could and did ignore them. They were frequently poor men, and the temptation to make a fortune out of their position was strong. They formed frequently a majority in the Legislative Council, and had to obey the Governor as to rejecting Bills. In Upper Canada they tried, sometimes not without success, to make the Lieutenant-Governor their tool. The judges were appointed by the Crown, and could be and were dismissed when they ceased to be useful. Both in Upper and Lower Canada dismissal was the penalty for independence, whether the culprit was a high or low official. The British colonial minister, seldom the most brilliant member of the Cabinet, invariably insisted that he should be consulted upon the minutest details of the Governor's policy. Failure to observe this rule brought upon the unfortunate

Governor a sharp rebuke, and frequently a recall in later times. It is true that the Governor knew very little about the true needs of the country, and was dependent for information upon the very officials whose misgovernment he ought to have checked; and yet it cannot be maintained that the Colonial Office, situated on the other side of the Atlantic, and with a head whose policy depended on party exigencies or the chance result of an election, was much better informed. Most of the rulers it sent to Canada from 1763 to 1837 were military men, sometimes able administrators, seldom statesmen, and only recommended by their previously formed habit of obedience to authority. The pay and privileges of the office were not, even in Lower Canada, sufficient to tempt a really able man to accept it, and it often went a-begging.

If the *personnel* of the Executive Council was so poor, little could be expected of its nominees in the Legislative Council. The English-speaking population in Lower Canada was small in early times, and the number of men fitted, either by natural abilities or training, for office under the Government was not even in proportion to that population. It was hopeless, at that early date, to find more suitable men among the French inhabitants; for, with the exception of the seigneurs, doctors, notaries, and advocates, there were few people among the laity with any pretence of education. French placemen in increasing numbers gradually filled the lower offices, but their chief claim was more often their docility than their nationality. The British official class kept a firm hold on the higher appointments, even of the Bench, and the Lord Chief Justice was an Englishman as a rule. Even of the judges appointed to administer the French Civil Law, few really understood the mass of feudal rules known as the Custom of Paris, and, certainly before 1791, it was the custom for the judge to administer a sort of irregular equity when too ignorant or too lazy to use the Civil Law. Few really able men are to be met with in the dreary annals of early

Canadian history, for genius was not looked kindly upon by the governing class, whatever might be the race of its possessor.

The Legislative Assembly of Lower Canada was intensely French in feeling. Perhaps, considering the habitant's past, and his want of any sort of preparation for the exercise of political rights, the franchise was too liberal. Except in Quebec, Montreal, Three Rivers, and Sorel it was hopeless for the English to attempt the election of one of their own countrymen. The method adopted in fixing the electoral districts, by Sir Alured Clarke, the Lieutenant-Governor, even gave the French an unfair increase of representatives. The fifty members were to be elected by counties, each returning as a rule two members, and by the four cities or towns. The Eastern Townships were at that time only partially settled, and no separate provision was made for their representation. It was not till 1829 that they received direct representation in the Assembly. Then eight members were granted to them; before that time they seem to have been regarded as part of the nearest French constituency. As was natural, the habitant preferred to elect his parish leaders, and so the members of the Assembly were doctors, notaries, advocates and seigneurs, with a varying number of actual habitants and small farmers. In the first parliament, sixteen of the members were British, at any rate in name, and this proportion was never exceeded.

So long as Dorchester remained Governor there was little actual trouble; the French population understood that he had every sympathy with their legitimate aspirations under the Constitution, and even the English inhabitants joined with them in forming a society for the education of the new electors in their duties. At first the French members, unacquainted with the principles of self-government, gladly allowed the British representatives to take a leading part in the business of the House. Except for the election of a French Speaker, and the decision that

the minutes should be kept in French, the majority did not act with any striking unanimity.

It was unfortunate that the concession of this phantom of responsible government synchronised with the outbreak of the French Revolution. Into Canada poured a steady stream of priests and nobles, seeking an asylum among a French race that yet remained true to its old traditions. At first all classes of the French Canadians were shocked at the excesses in France, and openly congratulated themselves that they were under British rule. There was soon to be a change of feeling, at least among the habitants and the half-educated class that supplied the doctors and notaries. The French minister Genet was labouring with great success to embroil the United States in a war with Great Canada. Not content with that, he sent emissaries to preach the new gospel of equality to the French Canadians, and to persuade them to form a new Republic. His offers were treated contemptuously by the clergy and upper classes, but they soon began to share Dorchester's alarm at the readiness with which the habitants listened. From the ranks of the latter were largely drawn the notary and the doctor, and, as Lord Durham points out, these men, on returning to their villages from the seminaries of Montreal and Quebec, were looked up to and too often implicitly trusted by the ignorant habitant. The latter was accustomed to be guided by them in his civil affairs, and naturally learned to accept political guidance from them also. Education was practically non-existent among the lower classes, and the few newspapers that might filter in from the States could not be read. When, at the beginning of the nineteenth century, a French Press appeared, it was edited and managed by a bitterly anti-British group of politicians.

Even Dorchester, although he sympathised with the native Canadian, never thought of entrusting him with true self-government, and he generally gave his confidence to those of his own nation. The fact that when, on the

prospect of war with the United States, he attempted to call out the militia, he found the French very reluctant to serve, did not encourage him to give them too much power. This suspicious attitude awakened the ambitious notaries to their real position under the Constitution. It was not long before a fairly compact majority appeared in the Assembly, and true to their ideas of political rights, they began to resent the eternal thwartings of their plans. They were the majority and ought to rule, but over against them stood the British merchant class, small in numbers but already important by reason of their wealth and the seigneuries they had bought from decayed Canadian owners. The opposition between the merchant and the notary was twofold. The former resented the prevailing system of indirect taxation, by which the commercial classes provided all the revenue of the country; the notaries voted this in the Assembly for objects beneficial only to their own party, and would do nothing to improve the commerce of the country. Moreover, many retired merchants and others had settled in the seigneuries, and found all their efforts to change their holdings to free and common soccage, or to introduce a more scientific agriculture, in vain. The notaries, who found in the litigiousness of the habitant a great source of wealth, naturally wished to retain the feudal tenure. The English merchant found he had bought an estate which he could not improve without incurring jealousy from his neighbours, and, owing to the absence of any system of registration of sales or mortgages, he was never certain of his title. All attempts to get a registry were vain, and even in the Eastern Townships there were none till 1830.

It was this obstinate but quite intelligible adherence to the Custom of Paris on the part of the notaries that prevented any extensive British settlement of Lower Canada, except in the Eastern Townships. The English seigneur received none of the reverence so willingly paid by the habitant to his French predecessor; perhaps,

however, this was on account of his insistence on what he conceived to be his strict legal rights over the seigneurie. To the habitant the seigneur had always been in theory a mere trustee, and as the feudal system was fast breaking down in Canada, the old dues were paid less cheerfully. The priest disliked the newcomers, for their lands did not pay tithe, and the peasant disliked them because, having fewer Church holy days to observe, they derived more advantage from the short Canadian summer. The English merchant had shot far ahead of his French competitor in the towns, and it seemed as if sheer superiority of method was going to give the Englishman dominion over the seigneuries also. He felt his superiority, and chafed at the antiquated law which kept him from sharing the prosperity of the farmers over the frontier. The Englishman's objection to the Custom of Paris was not in the least sentimental. He had come to Canada to better himself, and if the majority in the Assembly would only apply the taxes he alone paid to the making of roads and bridges and to the improvement of the country generally, he had no political ambitions. Often in disgust the English settler abandoned his farm and went off to Upper Canada or the newer States of the Union. Even in the Eastern Townships things were not much better. They were politically impotent in the Assembly, and it was not until 1823 that the establishment of a resident judge at Sherbrooke, in the district of St. Francis, relieved litigants from the necessity of transacting all their legal business at Montreal or Quebec. As has been mentioned, it was not until 1830 that the establishment of registries gave a man a sure title even to land held on English tenure.

If the wrongs of the English settlers remained unredressed so long it was not their fault. Unfortunately for themselves, they could not unanimously accept the remedy which the British Government might have offered—the enforcement of the Act of 1791; for they were not all English by nationality, many being Americans, and the

tenure which found favour both in Upper and Lower Canada was the American modification of the English Land Laws; this discarded primogeniture in favour of a system of division among all the children. The commercial class in the towns and the English in the seigneuries had thus little in common with the semi-Americanised settlers in the eastern township; it was not until Papineau and his party deliberately raised the question of nationality that the English-speaking population showed a united front. Lord Durham expressed their position accurately as a determination that Lower Canada should remain English, even if necessary at the expense of not remaining British.

There was as little sympathy between the merchants and the officials at Quebec, as between the former and the people of the Eastern Townships. The mercantile classes only cared for political influence as a means to secure increased prosperity, and they disliked as much as the French leaders the exclusiveness of the official clique. A few of the richer merchants were taken into favour, but that only made the others more envious; they were powerless both at the Castle of St. Lewis, and in the Assembly, and we cannot blame them for intriguing perpetually at London for the revision of the Constitution. During Dorchester's tenure of office the official class, aided by the merchants and a few of the seigneurs and better class French Canadians, could count on a party in the Assembly, whose members were no real criterion of its strength; but with the coming of Governor Prescott, Dorchester's successor, began the system of the oligarchy, due to the final severance of interest between the official and non-official English on account of the revelations as to the doings of the Land Board Committee.

The Land Board was composed of members of the Privy or Executive Council, and its duties were to manage the Crown lands, and allot them to settlers. Prescott very soon saw that the backward state of the country and the scantiness of the English population were due to official

mismanagement. He transmitted a report to the Colonial Office, revealing a scandalous system of jobbery and corruption on the part of the Land Board officials. Of necessity, he had not dared to give his confidence to the Executive Council, and when he produced his instructions to reform wholesale the existing state of things, there was trouble. The guilty councillors cleverly embroiled their fellow-members of the Executive Council in the quarrel, and it degenerated into a personal squabble between the Governor and Chief-Justice Osgoode. Both sailed to England, and the officials breathed again.

The direct result of this exposure of the Land Board's mismanagement was to encourage the French leaders to oppose any attempt at reform. They felt stronger now that the settler and the official were at loggerheads, and the yielding character of Prescott's successor, Sir Robert Shore Milnes, opposed no obstacle to their ambitions. He flattered them, because otherwise he could not have governed Lower Canada at all. The Assembly as yet, however, had no definite leaders and scarcely a definite policy, unless opposition to the engrossing of all important offices by the British constitutes one. The officials in their turn, finding that it was useless to seek supremacy in the Assembly, found a sort of tacit alliance with the commercial interests at Quebec and Montreal; they would, so far as they dare, ignore the Assembly they could not manage, and perhaps after the war they might secure a revision of the Constitution. The situation was anomalous; it was impossible to carry any law either party objected to, and yet, for all their power in the Assembly, the French Canadian leaders had not an atom of control over the men who governed the country. The Governor-General was responsible only to Downing Street, and disregarded, when it pleased him, the wishes of Council and Assembly alike. Governor Milnes only gave the Assembly fair words, and his successor, Craig, was not even so complaisant. ✓

CHAPTER III.

“LA NATION CANADIENNE.”

CRAIG came at an unfortunate time (1808). The two parties had at last become definitely opposed, and moreover Genet's intrigues were soon to bear fruit in the war of 1812. The Assembly had passed a Gaol Act, just before his arrival, providing for the construction of gaols out of the provincial revenues. *The Quebec Mercury* and *The Montreal Gazette*, as representatives of the commercial element, out of which the taxes came, protested against this incessant plundering of the British population, and suggested that a local rate would have been preferable. There was nothing so distasteful to the Assembly as criticism, and the offending editors were summoned before the House for breach of privilege. This unwise proceeding caused a tremendous sensation among the commercial class, and it was now openly said that Lower Canada was too French for a British colony, and it was high time to put a check to the proceedings of the Assembly. At that very moment the Assembly had planned to take the offensive, and in 1806 *Le Canadien*, the first French newspaper, appeared.

The new paper was said to be controlled by Panet, the Speaker of the Assembly, and Pierre Bedard, one of the most influential members. It was very ably edited, and being written in French, penetrated into all the country villages. From first to last the writers attacked the Government, although carefully avoiding any denunciation of England. They rather took their stand upon the rights of parliament, as laid down in the great English law-books, such as Blackstone, and claimed for the Assembly all the rights of the House of Commons. It was suspected that

the writers enjoyed the secret support of the anti-British element in the United States, and this suspicion was quite enough to make the paper distasteful to Craig, who had been expressly sent in view of the expected war.

Quite early in his governorship (August 8th, 1808) Craig wrote to Lord Castlereagh a remarkable dispatch. He said,¹ "They (the Canadian leaders) believe, or affect to believe, that there exists a ministry here, and that, in imitation of the Constitution of Great Britain, that ministry is responsible to them for the conduct of the Government. It is not necessary that I should point out to your lordships the steps to which such an idea may lead them." Perhaps Craig understood better than Bedard himself the ultimate tendency of the latter's proceedings. The present demands of the French leaders were much more modest. They were to remove the judges from the House of Assembly, and by becoming responsible for the expenses of the civil government of the province, to secure control over the officials. In theory, there is little in their plans to which exception can be taken, but the time was inopportune, and the methods by which they sought these reforms were most unwise. Bedard and his friends used *Le Canadien* to preach a policy of "Lower Canada for the French" in most offensive terms, and held themselves aloof from those Englishmen who would otherwise have supported them. They made all their demands together, at a time when war was daily expected with the United States, and when England was in the very thick of the struggle with Napoleon. Craig was a soldier, not a politician, and neither he nor the ministers who appointed him were willing to give the French rights which were scarcely recognised in England. A colony was a dependency, and only in municipal affairs were the colonists' wishes to count for anything. Opposition was to be mercilessly crushed, and people must take for granted the Governor's good intentions. Craig does not deserve the

¹ Can. Arch., Q. 107, p. 312.

obloquy thrown upon him by some writers, especially by Garneau. He could do no otherwise than he did; the system was to blame, not the man, for in all he could, he devoted his powers to the welfare of the province.

One of the first acts of the Assembly was to pass a measure excluding the judges from the Assembly; the Council threw it out, and in consequence some members of the Lower House wished to exclude the judges by resolution, as they excluded a Jew, who had been returned for Three Rivers. In his prorogation speech Craig lectured the Assembly in a paternal way, which was much resented. The new elections were keenly contested, and Speaker Panet lost his seat at Quebec on account of his extreme views. He had taken part in a meeting at which the executive had been attacked, and, although he was elected for Huntingdon, Craig determined to teach the students of Blackstone a lesson. Panet, Bedard, Taschereau, and two others were dismissed from their commissions in the Militia as being concerned in the issue of the disaffected organ *Le Canadien*. Panet was accepted as Speaker, however, and Craig encouraged the Assembly to legislate, so that the United States' embargo would only develop the resources of Canada. The Assembly preferred to proceed with the Bill for the disqualification of the judges, and the result was that Craig incontinently dissolved parliament in an extraordinary speech which praised the Legislative Council for their conduct, and accused the Assembly of wasting time in frivolous debates. For a time it seemed as though Craig's transparent honesty of purpose was approved of in the constituencies, but *Le Canadien* soon effected a conversion of sentiment. The habitants were uneducated and incapable of judging of the real meaning of the frothy commonplaces of their leaders, but the appeals to passion, and sometimes to religious bigotry, had little effect on the better educated seigneurs. Unfortunately, the latter had no influence compared with the agitators, and the undisguised hostility of Secretary

Ryland and his friends to the retentions by the Roman Catholic Church of its endowments prevented the clergy from discountenancing the anti-British tendency.

The new elections were a disagreeable surprise to Craig. He had had an almost triumphal tour around the province, and met the new parliament with one of his usual speeches about British victories and the need for union against the States. As an olive-branch, he told the members that the King had allowed him to sanction a Bill for the exclusion of the judges. The answer he received was a Resolution of the Assembly, carried by 24 votes to 11, that his late speech, in which he attempted to censure the Assembly, was a breach of privilege, and an attack on the liberties of the province. There was worse to follow; it was the second part of the Assembly's policy to secure the whip-hand of the officials. Resolutions were passed in the Assembly that the province was able and willing to bear the expense of its own civil government. The Assembly had totally ignored the Legislative Council, and in another respect—that the Crown had not asked for a grant—the proposal to pay the civil expenses was contrary to precedent. Craig, in his reply, pointed out these mistakes, and although he agreed to forward the Resolutions, he did it with a salvo of the rights of the Legislative Council and the Crown.

Bedard and his party were not content with this reply. They asked the Governor to order the proper officer to lay before the House an estimate of the civil expenses—presumably, from their later conduct, with a view to reducing the salaries of obnoxious officials—and in addition a committee was appointed to consider and report upon constitutional usage in the matter of voting supplies. It was bad enough for Craig to find that his law was not accepted, but Bedard was not content with this. A proposal was made to appoint an Agent in London quite independent of Craig and the Councils, and the Bill for the exclusion of the judges was again passed. The Legislative Council were

willing to accept it, if it might take effect on the expiration of the present Legislature. The Assembly showed its true colours by ignoring an obvious constitutional victory, and promptly excluded Judge de Bonne, an obnoxious French official, from the House. This decision was a foreshadowing of the later policy of Papineau. Out of fifty members, only twenty-four voted; eight dared to oppose the extremists, and twenty-six did not vote or were absent. It is not surprising that Craig dissolved the Assembly. Dorchester would have rallied the moderates by concessions, but Craig had fallen into the hands of Sewell and Ryland, who did not at heart wish the Assembly to exist at all. A policy of exasperation and no concession might drive it into action that would result in the suspension of the Constitution.

We must acquit Craig of any intention to play the tyrant; the fact is that he was a soldier, and saw that war with the United States was inevitable. The Assembly, in its existing state of feeling, was dangerous to the security of the province. Craig could see that the extremists had no more a coherent majority in 1810 than in the final struggle before the rebellion, but he did not understand that his true policy was to expose the groundless nature of the Assembly's claims by argument rather than to use force to terrorise the malcontents into submission. Addresses of approval from many parts of the province had followed his action in dissolving the Assembly, but his violent conduct in forcibly suppressing *Le Canadien*, and arresting the printer, and, soon afterwards, Bedard, Blanchet, and Taschereau, checked the movement in his favour. As the prisoners were all released in course of time, untried, it seems that Craig found his suspicions of treasonable intercourse with Americans to have been unfounded, but it cannot be denied that *Le Canadien* had exerted a baneful influence on the struggle. Its appeals to passion and prejudice consorted ill with its professed constitutionalism. Unfortunately, its suppression was far from bringing peace,

as the consequent military precautions Craig took made the French uneasy. Other arrests followed that of Bedard, and much feeling was aroused.

Craig issued a long proclamation stating that “treasonable writings were being circulated in the province at great expense to some person unknown; he had been grossly slandered, as he had neither applied for troops nor proposed to tax land so as to relieve the mercantile class of some import duties. As to the offer to pay the civil expenses, the King must be consulted, and time was required. The agitators could not know his plans, and people should listen to the clergy, who were their advisers before. He himself had no motive for oppressing them, as he was a dying man, and only remained in Canada to please the King.” Craig tried to convince Bedard, who remained longest in prison, because he would not own his error; the utmost Bedard would say was that he believed the Governor had acted in the way he thought best, but that his conscience would not allow him to plead guilty. Ultimately Bedard was released before Craig returned to England, and he at least seems to have realized that he had not acted wisely.

Craig, in despair at governing in accord with the Assembly, sent his private secretary, Mr. Ryland, to London to propose changes in the Constitution. Lord Liverpool’s ministry was then in power, but although Ryland remained in England from August, 1810, till March, 1812, he could not obtain more than fair words. The plan proposed was to abolish the Assembly, and obtain money by confiscating the estates of the Sulpicians, under plea of a flaw in the title; the income derived from these estates and from that part of the Jesuit estates not applied to the support of education would make the Government independent of the Assembly. Moreover, the people could be kept under control by the Crown allowing the Roman Catholic Bishop a salary as Superintendent and by the appointment of the curés only by letters of confirmation from the Government.

Most important, too, was it that the proceedings against *Le Canadien* should be approved.

The ministry had enough on their hands with the war in Spain to risk a rebellion in Canada, nor were the members sufficiently homogeneous in their politics to make an alteration of the Constitution easy. Ryland was told that the utmost possible was the reunion of the two provinces; that the law officers recognised an equitable although not a legal right of the Sulpicians to their estates, and that the Assembly should be managed by "bringing over" some of the Opposition; as for the proceedings against *Le Canadien*, they were scarcely legal, but excusable from its conduct, although a better policy would have been to prosecute it for libel. Ryland failed in his mission, but he had so impressed Lord Liverpool that he was recommended to Sir George Prevost, Craig's successor; Prevost and Craig, however, were two different characters, and Ryland was glad to receive a monetary equivalent for his post in 1813.

In June, 1811, Craig left Canada. To the last he had trouble with the Assembly, for the number of British in the House of 1810 was only nine. With great reluctance the Assembly passed the "Act for the better preservation of His Majesty's Government" and the "Alien Act," which were both about to expire. There was a difference of opinion as to the state of feeling in the province, but Craig was a little more conciliatory. The Assembly had no wish to see the province annexed to the United States, and passed the Militia Act, Craig accepting an Act for the exclusion of the Judges. Perhaps the French leaders were beginning to see the Governor's good points, his geniality and frankness, and his interest in everything that concerned the welfare of the province. The Governor closed the session with a speech in which he actually praised the Assembly for their attention to duty, and preached them a little homily on the advantages of union to the province. He probably believed sincerely in the roseate picture of the

province which he painted for them, but it was well for British interests in Canada that he was succeeded by Prevost. Violence had failed to curb the Assembly.

Prevost had been very popular as Lieutenant-Governor of Nova Scotia. He won similar favour in Canada. The Executive and Legislative Councils were strengthened by the introduction of moderate members, and Prevost conciliated the Opposition by restoring their commissions to militia officers previously cashiered by Craig. He cleverly muzzled Bedard by making him judge of Three Rivers. Finally, just before he left Lower Canada, he appointed Speaker Panet to a seat in the Legislative Council; this allowed the election of Louis Joseph Papineau as Speaker of the House of Assembly.

The appeasement of the French took place not a moment too soon, for without the active co-operation of the Canadians, Lower Canada could not have been defended against the Americans. Prevost's real title to fame is too frequently eclipsed by his misfortunes in the war of 1812, but the Canadians never forgot him. Colonel de Salaberry's splendid victory at Chateauguay caused great enthusiasm, and somewhat made up for Prevost's failures.

Prevost had little trouble with the Assembly; perhaps the war had calmed the advanced party somewhat, for spies were swarming in the villages, and this circumstance, combined with the insulting speeches and proclamations of the Americans, caused imaginary grievances to be forgotten. His personal popularity caused the Assembly to prefer that he alone should exercise the extra-constitutional power to arrest suspects, rather than that he should be checked by the Council, and liberal supplies were voted. His military failures, however, gave the British population a means of attacking one who was too friendly to the French, and, despite the petitions of the latter for his retention in the Government, Prevost had to return to England.

After a brief interval Prevost was succeeded by a

like-minded Governor, Sir John Sherbrooke. His first difficulty was the case of Chief Justice Sewell, who, for his part during Craig's government, had incurred the bitter hatred of the French. The latter had found an ally in Sir James Stuart, who had been dismissed from his post as Solicitor-General by Craig ; and even under Prevost's rule attempts had been made to impeach Sewell. The Chief Justice, however, secured the ear of Lord Bathurst, and also that of Edward Duke of Kent, and thus secure, he had his revenge by proposing that there should be a federation of all British North America, which would effectually destroy the Assembly's power. Sherbrooke recognised that, at present at any rate, he had to govern with the Assembly, and proposed to solve the difficulty by pensioning off Sewell and making Stuart Attorney-General. The reign of the officials had come to an end to all appearance, for Sherbrooke wanted to give Papineau, then becoming prominent, a seat in the Executive Council, and did actually succeed in inducing Bishop Plessis to accept nomination, with the consent of the Colonial Office. Unfortunately, Sherbrooke remained in the colony little more than two years, and his efforts to govern in harmony with the Assembly were not consonant with the ideas prevailing in Downing Street. There was no wish to oppress the colonists, but they were to remain as children, satisfied with a toy instead of real self-government. In justice to the Colonial Office it must be admitted that no intelligible plan of reform was put forward by the Opposition ; certainly responsible government in the later sense was not thought of, and the greatest innovation even Papineau suggested after 1828 was the introduction of the elective principle for the appointment of members of the Legislative Council. No one, in Lower Canada at any rate, asked that the Executive Council should retire when it failed to find support in the Assembly ; the French leaders had no wish to assume responsibility, but preferred to gain their ends by impeaching recalcitrant members of the Govern-

ment. The Assembly were to govern through subservient English officials, and the Assembly soon became a synonym for Louis Joseph Papineau.

The Colonial Office had a difficult problem to solve ; it could either support the policy of Prevost and Sherbrooke or disavow it. The former course seemed likely to develop a system of colonial government quite different from anything yet known, and it meant leaving the rich merchants of Lower Canada as a prey to the party who, supreme in both the Council and the Assembly, would govern Canada for their own advantage. Owing to the fact that Upper Canada had no port and that the Assembly of Lower Canada resolutely refused to deepen the St. Lawrence shallows so that the canals of Upper Canada might be reached from the sea, the party governing Lower Canada commanded also the fate of Upper Canada. We must bear this relation of the two provinces in mind to see any justification for the policy of the British Government. Hume, Roebuck, and the other extreme Radicals of the day, vehemently supported the French in the coming struggle. The majority should govern, according to the principles of Liberalism, even if that majority was due to an unnatural division of territory, and was led by men who did not understand in the least the principles they professed to fight for.

The second alternative was the reunion of the two provinces. No other course was possible if Sherbrooke's scheme of conciliation was to be disavowed, but, unfortunately for this policy, it was only popular among the British of Lower Canada. The inhabitants of Upper Canada, especially the party in power, led by Archdeacon Strachan, would have none of it ; the Assembly's reputation had gone before it, and the population of Upper Canada was as yet too small to out-vote the French by fair means. The Canadian question coincided in point of time with the great Liberal movement throughout Europe, and the younger French Canadians became enthusiastic for theories

which promised to serve their ambitions so well. They found a fitting leader in the new Speaker of the House of Assembly. Now for the first time the French had found a leader with qualities that appealed to them far more than the legal pedantry of Bedard.

Papineau first entered the Assembly in January, 1810. He came of a family whose loyalty to the British connection was well known. He himself always protested his loyalty to the British Crown, even after the rebellion; perhaps the position he took up at first arose from mere ungratified ambition, as was so commonly the case in those early days, when all honours were engrossed by members of the ruling race. Afterwards there can be no doubt that he entertained designs by no means consonant with his duty as a British subject; it may be that towards the final scene he was pressed on by the flood of passions which he knew better how to excite than to calm or guide into safe channels. He was a man of imposing presence, an eloquent speaker, after the fashion of his countrymen, and possessed remarkable power of fascinating all who came into contact with him. He stood forth as the leader of the young Canadians, the champion of Canadian nationality against the intruding British. Everything favoured his schemes: harvests were bad; the English Corn Laws deprived the habitant of a large market; English settlers were flooding the country; and, finally, Upper Canada produced in William Lyon Mackenzie a fellow-agitator.

Against the serried phalanx of French Liberalism the British Government could only oppose the sporadic efforts of constantly changing ministries, with Colonial Secretaries who deemed it a point of honour to "do something" with Canada. It generally took the form of sending a new Governor, or, later, appointing a Royal Commission, but these remedies were quite useless. The Governor must carry out the orders of Downing Street, and although the Commissions had of necessity more liberty in reporting, there were ample means for counteracting or actually

neglecting the remedies proposed. The British ministries, whatever their private politics, agreed in one thing—the impossibility of conceding the elective Legislative Council, and so allowing incidentally the French Canadians to arrange the salaries of the officials at their pleasure. Finally, the Assembly, under the influence of Papineau, fatuously refused first to vote supplies, and then actually refused to transact any business until their demands were granted. Such a challenge roused even the reformed House of Commons, and the suspension of Lower Canada's constitution was the inevitable outcome of Papineau's policy.

CHAPTER IV.

THE PARTING OF THE WAYS.

THE brief government of the Duke of Richmond (July 30th, 1818—August, 1819) was a fitting prelude to the new policy; to carry it out Lord Dalhousie was chosen. Richmond's Government was the last in which the oligarchy had any power, Sewell being his chief supporter and adviser. The British Government determined to end the struggle for mastery by a very simple process. In 1822 the Under Secretary for the Colonies, Sir Robert Horton, introduced the famous Union Bill. Upper and Lower Canada were to be united in one Legislature, each having sixty representatives in the new Assembly, irrespective of population; and the high property qualification proposed would have effectually disfranchised the habitant in most cases. The French language was to be permitted in Parliament for fifteen years longer, and the Roman Catholic Church was to be curbed by the Act of Supremacy. New counties might be formed out of the townships. The British of Montreal, thanks to the pressure successfully exerted in London, were to have all they asked for. The remedy seemed simple, and the ministry were congratulating themselves, when the whole scheme fell through. The Radicals in the unreformed parliament were few in number, but the Union Bill of 1822 was too unblushing an attack on their creed to escape notice. The ministry was asked to ascertain the feeling of the inhabitants of Lower Canada on the Bill; the inhabitants of Lower Canada spoke with no uncertain voice. Papineau himself, accompanied by a Quebec journalist named John Neilson, as representative of the more Liberal section of the British, took to London

a monster petition bearing 60,000 signatures, or perhaps, to be strictly accurate, names of inhabitants with marks appended. The Government had given Papineau a party, alienated the clergy who had been their firm supporters, and frightened peasant and seigneur alike by proposed alterations in the Land Laws. Even in Upper Canada the Bill found little support.

If the Bill could not be passed in its entirety, it might have a different fate when presented in instalments. The Roman Catholic clergy were conciliated by the withdrawal of the attempt to control their Church. In 1823 the commercial relations between Upper and Lower Canada were put on a more satisfactory footing by the Canada Trades Act (3 Geo. IV. c. 119). As will be related afterwards, there was considerable difficulty in persuading the Assembly of Lower Canada to treat the upper province fairly in the matter of dividing the Customs duties collected in Lower Canada. Although the population of the upper province was increasing rapidly, and the consumption per head of the imported articles was much higher than in the lower province, Upper Canada had only received one-eighth of the dues levied; after July 1st, 1824, the proportion was to be one-fifth, and a fresh award was to be made by arbitrators every four years. It was claimed that this Act of the Imperial Parliament infringed the Declaratory Act (18 Geo. III. c. 12), as to the taxation of the colonies by the Mother Country.

The latter clauses of the Canada Trades Act proposed to allow the commutation of the feudal tenure. It was permissive only, but it was expected that many would avail themselves of the chance to obtain lands on free and common soccage tenure. The Canada Tenures Act (6 Geo. IV. c. 59) gave elaborate instructions as to the manner in which the conversion of tenure might be made, and about the same time a charter was granted to the British American Land Company. The company was formed to encourage the settlement of the Crown and

clergy reserves, especially in the Eastern Townships, by immigrants from England. The great emigration after the long wars was just beginning, there was much distress in England, and "Chartism" was rife. Many of the more intelligent middle and lower class people eagerly took the opportunity to start life afresh. The more energetic did not remain long in Lower Canada, which, they decided, was no place for Englishmen, but pressing on to Upper Canada, helped to make the company's colonisation scheme there a success. In Lower Canada remained the unfit and the parish immigrants, and their only resource was to swell the British mob in the cities of Montreal and Quebec. They did not understand very much about the rights and wrongs of the coming struggle, but their presence increased the dislike of the English in those French of the lower classes with whom they entered into competition for work.

Before going into the details of the final struggle which ended in the refusal of the Assembly either to vote supplies or to perform any of its functions, it is necessary to explain the origin of Papineau's power in the constituencies, which seems so unaccountable to modern notions of French Canadian loyalty. There are few today, even of his own race, who attempt to justify Papineau, and the most cursory glance at the French Canadian electorate in the old days enables one to see alike his strength and his weakness. The French inhabitants of Lower Canada were divided into two main classes—the seigneurs and the peasantry, or "habitants." Trade was generally in English hands, at any rate, trade on a large scale, and the only important professions outside Holy Orders were those of the doctor, the advocate, and the notary. The seigneurs were from the beginning supporters of the British Government, as were the clergy, and the loyalty of these two classes, strengthened by the French Revolution and the war of 1812, never failed to any appreciable extent. They may have resented their

comparative impotence in the State, but the seigneurs were not used to political rights and were seldom ambitious, while the clergy, generally sprung from the lower classes, were content with their spiritual influence.

It was quite otherwise, however, with the members of the medical and legal professions. Like the clergy, they often sprang from the people, and by virtue of their calling had great influence in their native village, to which they generally returned. The habitant, although in most cases totally unable to read or write, had a great respect for educated people, and thus, even when the French press had become a reality, he had to take his news from the lips of the men from whom he received his law and medicine. They were frequently enthusiastic admirers of the French Revolution, or at least favourers of American rather than British ideas of the rights of colonies, and in later times delighted to compare themselves to the European Liberals who were fighting for freedom against tyrant kings. Papineau's chief supporters were men of this type. They had little to lose and everything to gain by agitation. They found it impossible to obtain any share in their country's government except through the Assembly, and therefore claimed for the Assembly powers which, if granted, would have made government impossible. A quarrel with Upper Canada would certainly have followed upon the triumph of the French Assembly over the British Government, and the result would not have been long in doubt; the French were almost without arms, and would have been exposed to an attack not only from the remaining British colonies but also from the United States. In fine, the policy of the French leaders was suicidal in its short-sightedness; they would not hear of concession, and yet they had nothing to hope from any appeal to force, the only alternative.

The habitant for a long time took no interest in the political question; he elected his seigneur or his doctor or the local notary or advocate whom he favoured, and,

occasionally, he displayed resentment when the Assembly, under Government pressure, passed Acts to secure the making of roads, or a slight alteration in the shape of the cariole, to give the existing roads a longer life. Yet he was responsible for the election of, generally, two-thirds, and frequently four-fifths of the Assembly, although he could not sign his name, and had only the vaguest possible ideas about the world outside. What touched him more closely than all his political wrongs was the growing burden of the *cens et rentes* and the various other feudal dues. His ancestor had gained by changing his condition, and becoming a *cultivateur* in Quebec, but year by year the descendant was sinking in fortune. Estates were divided and subdivided under the French law of succession, and the average family of the habitant did not grow less. It was useless to recommend colonisation as a remedy, for he had no means of carrying his church into the wilderness and therefore he would not go himself. Intensive cultivation might have helped him, but he was unscientific in his methods; the British Government once taught him hemp-growing, but as hemp did not pay tithe, the clergy discouraged it. He had, it is true, an indefeasible right to his holding, but however much he improved it, the seigneur could claim a portion of the price it was sold for.

He saw with dismay the substitution of English for French seigneurs, and the incoming of English farmers on seigneurial lands. The new seigneur was too often a hard master, and the new farmer, seeing that he paid no tithe, could cultivate at a profit lands which had been the ruin of the less energetic and tithe-burdened habitant. Sometimes the newcomer inter-married with the natives and his descendants became as French as they, but later, even intercommunication was rare, and, egged on by his leaders, the habitant tried to scare away the unwelcome intruders by a system of petty persecution or open boycott. After the peace of 1815 there was a period of economic distress in Canada; the English Corn Laws shut out

Canadian produce from a good market, and the Navigation Act sealed up the St. Lawrence to foreign trade. A petition of the Assembly to Lord Bathurst in 1821 states that the wages of labour and the price of land had fallen by one-half, and that the revenue had dropped from £102,142 to £78,164. The habitant's only notion of politics was due to the teaching of republican emissaries and their disciples the notaries. He wished to cast off his feudal burdens, as his brethen in France had done, and this inclination was not unknown in England. The Canada Tenures Act was meant to be a boon for seigneur and tenant, English and French alike, but the notaries were not likely to consent. The natural litigiousness of the peasant was increased by the difficulty of establishing a clear title to any estate; this was due to the fact that successive mortgages could be and were obtained on one farm. There were no registry offices in the feudal domain; for sales and mortgages were quite valid if made in the presence of any notary, and a prior purchaser or mortgagee could claim the estate from a later without compensation; only by the expensive process of a "decret" or sheriff's sale could a secure title be obtained.

This system was too profitable to the notaries to be abolished, and we can understand that they eagerly sought for flaws in the proposals of the British Government. They maintained that the new law favoured the seigneurs by giving them the waste lands of which they were only the trustees for the habitants. When the Tenures Act was pointed out to be part of the same plan as the British American Land Company's scheme to anglicise Lower Canada, the notaries' victory was complete. Although Papineau affected to approve of the proposed commutation, the seigneurs themselves took alarm. The commutation of the tenures became a stock Canadian grievance, and henceforward the habitants sought to defeat the British conspiracy against them by supporting the notaries in the Assembly. Whenever the Governor dissolved the Assembly

the only result was to increase Papineau's power, for he and his lieutenants took advantage of the elections to weed out every man who would not follow unhesitatingly in the new plan of campaign.

It has been mentioned that one of the schemes of Bedard and his followers was to obtain control of the Government by granting the Civil List. Although refused at the time, the British ministry recalled the offer when, on the conclusion of peace, they found it necessary to make every possible economy in the Imperial expenditure. The Assembly were quite willing to renew their offer, but under certain conditions. The revenue of Canada was derived from (*a*) certain import duties imposed by the Imperial Parliament's Act (14 Geo. III. c. 88), in place of less convenient pre-conquest charges; (*b*) provincial duties, established by the Legislature; and (*c*) the royal casual and territorial revenues, arising from the profits of the Jesuit estates, the seigneurial dues, and other sources. Hitherto the Assembly had been accustomed to vote appropriations out of the provincial duties only, the rest of the revenue being expended by the Governor with the advice of the Executive Council. Canada was at first, in theory, a military colony, and any deficit in the expense of maintaining its civil government was made up out of the Imperial military chest. The deficits increased as the income from the royal revenues was by no means commensurate with the growing expense of government. The Assembly, however, often voted more than was covered by their appropriations, and, without asking the consent of the Legislature, this surplus was used to cover the deficit. From 1813 there had been an annual deficiency of £20,000, and £120,000 were due to the province.

Sherbrooke had pointed out to Lord Bathurst the inconvenience which might arise in the future from this appropriation of provincial money, and was told to persuade the Legislature to take over the expenses of government, in accordance with its previous offer. Bathurst warned him

to be careful of the interests of the Protestant clergy and the pensioned officials, as well as of the rights of the Legislative Council. The Colonial Secretary had good grounds for his warning, for the Assembly at once demanded that every item in the expenditure should be submitted to an annual vote. Thanks to Lord Durham's advice, the Union Act of 1840 declared that money grants could only originate with the Crown, and the Act of 1867 repeated the prohibition. The Assembly, however, were henceforward to fight for two things, the right of every member to originate a money grant for any purpose whatever, and the control of every portion and detail of the provincial revenue, so that an obnoxious official might be made to feel the Assembly were his master.

The Assembly were as wrong in their constitutional law on the former point, that of voting salaries in detail, as they were right in their demand for control over every portion of the provincial revenue. That they could not at first secure the latter was due to their bad management, rather than to any tyranny on the part of the British Government. A favourite plan of the French leaders was to secure control over the appointment of judges. They were at that time appointed by the Crown "during pleasure," and the French asserted, probably with truth, that they were subject to pressure from the Government. The British ministry were quite willing to assent to any scheme which, by securing to the judges fixity of tenure on the English plan, would make them independent of Assembly and Government alike. The French leaders foolishly insisted that the salaries of all officials, including the judges, should be voted yearly and name by name, in opposition to the plan of the Imperial Parliament, which established the amount of the Civil List at the commencement of each king's reign, and granted it for his life, only the incidental supplies being annually voted.

It would be tedious to trace in detail the proposals and counter-proposals on the question of the Civil List. It may

suffice to say that the Assembly objected to the payment of certain officials out of the revenue raised under the Imperial Act (14 Geo. III. c. 88), and claimed the right to control all the provincial revenues, making annual votes only. From June, 1824, to September, 1825, Lord Dalhousie was absent from the province. The Lieutenant-Governor, Sir Francis Burton, was popular with the French, perhaps because he was more complaisant than Dalhousie; at any rate, in January, 1825, he so far respected their wishes that he asked simply for a vote of £31,456 6s. 0d. to cover the deficit arising from the insufficiency of the amount provided by statute, £40,545 15s. 10d. The Assembly, after a long discussion, voted the supply asked for one year, and although the Bill sent up to the Legislative Council was passed as suitable, the Assembly claimed to have established their right to control all the revenue. When Lord Dalhousie returned, the dispute recommenced, for the law officers of the Crown decided that the Imperial Government's power over the revenues raised under 14 Geo. III. c. 88 was indisputable. Dalhousie was ordered to pay the officials their salaries from this fund, and this caused great excitement among the French. Naturally the habitants, who only read or heard the version given in the French newspapers, supported the Assembly, and to increase this sympathy between leaders and followers, an address was voted by the Assembly to the Home Government, asking for their rights under the Declaratory Act (18 Geo. III. c. 12), as otherwise they would be unable to provide for the charge of the civil government.

The French leaders could not hope to convert the British Government to their views; legally the ministry were unassailable, but, with that blind perversity which marked all Papineau's proceedings, he insisted upon fighting the question on a false issue—that the Home Government wished to tax the colonies in spite of her promise given in 18 Geo. III. c. 12. The judicial system was terribly in need of reform, but Papineau preferred to use the abuses

as a lever to obtain more power for his party. His policy is the more regrettable as the colony was flourishing and could easily afford the money asked. The Assembly, however, took advantage of the bankruptcy of Receiver-General Caldwell, and the fact that during the war of 1812 Upper Canada had not received her share of the joint revenue (no accounts being kept) to plead the poverty of the country as a reason for their careful stewardship. They insisted on viewing an advance made by Dalhousie to ease the difficulty caused by Caldwell's bankruptcy as a private loan, and they treated Upper Canada so badly that the Imperial Government interfered. As the Assembly showed no inclination to renew their temporary Act, the ministry settled the question of the joint revenue by Imperial statute, for the alteration of which the consent of both provincial Legislatures was necessary. The obvious plan was that the Assembly should guarantee a proper Civil List in return for the repeal of 14 Geo. III. c. 88, but that solution of the difficulty was too simple for Papineau. In 1826 the Assembly definitely refused to vote supply except on their own terms. Dalhousie prorogued parliament in a speech in which he pointed out how their policy had put an end to all legislation, although some measures were most pressing; he could not expect them to see their error, but he appealed to the country. In one sentence he put the question in a nutshell: "During this Session there has been a positive assumption of the executive authority, instead of that of legislation, which alone is your share in the Constitution."

Dalhousie received addresses of support from the English-speaking population, and his challenge had found the weak point in the Assembly's position. Instead of arguing the question as to their claim to be the executive as well as the legislative body, Papineau and his friends prepared a manifesto in anticipation of the elections. They laid at the door of Dalhousie the failure to provide the Acts so much needed; they themselves were as completely in the

right as the Governor-General was wrong. Papineau seems to have taken a delight from this time in insisting on a quasi-conspiracy among the English to put down "la Nation Canadienne." The English declined to admit the existence of "la Nation Canadienne" except in a geographical sense, and as their own numbers began to increase, they became as disinclined to argue as Papineau. A bitter feeling grew up between the two races; a few British, chief of whom was John Neilson, a Scotchman, owning *The Quebec Gazette*, supported the Assembly on political grounds. Dalhousie had offended Neilson, partly on private grounds, but also because of his refusal to treat the claim of the Assembly to control taxation as on all-fours with the undoubted rights of the Imperial Parliament. Neilson, and afterwards Wolfred Nelson, of St. Denis, were members of a small party of constitutional Radicals; Neilson certainly had no thoughts of rebellion, and deserted Papineau, after 1828, as decidedly as he opposed the Union Act of 1840. Wolfred Nelson, Doctor O'Callaghan, and the other English and Irish members of the French party, were generally enthusiastic rather than able men, who were unable to see the inevitable outcome of such a reckless agitation. In common with Papineau, they believed till too late that the English Government would yield all rather than risk a second war of independence.

The French who supported the English authorities were more numerous, and it is certain that, even among Papineau's intimate friends, few dreamed of armed resistance. What Papineau himself expected it is hard to say; he denied afterwards that he planned rebellion. We cannot, however, forget threats and reckless speeches, or the assurances he gave his followers that Americans would help them.¹ In fact, he was only a politician, and the strongest condemnation of the Constitution of 1791 is that such a man could

¹ In a letter dated December 7th, and found at St. Denis in 1837, Papineau counselled perseverance in constitutional agitation as the best course. *See also* another letter quoted by Kingsford, Vol. IX. pp. 444—445 n.

climb to power on the support of an agrarian agitation the aims of which were diametrically opposed to the interests of himself and his friends. He seems to have taken a bitter dislike to Dalhousie, and did his best to disgust with him all the ignorant habitants. His language was as unrestrained as that of the most excitable member of the Assembly, and he treated Dalhousie with the most studied rudeness. At this date we can see how little the Governor deserved the treatment he received. Dalhousie was personally a most able man, and took a keen interest in promoting the prosperity of the province. It is possible that Lord Durham owes much to him in the recommendations he made in the Report as to road and bridge building, the enforcement of the Homestead Laws, and the reorganization of the Eastern Townships. Unfortunately for himself, Dalhousie was ordered by the home Government to carry out an impossible policy in the teeth of men who would not understand the meaning of concession. His natural arbitrariness was bound to be increased under such circumstances. This disinclination on the part of the Governor to rally round himself a constitutional party prevented many French Canadians and men like Neilson from opposing Papineau actively as well as passively. Others were enthusiastic for reform in an age when Liberalism seemed to be everywhere the rising faith, and if they could see in the mild government of England a remorseless tyranny, we can understand the feeling of the ignorant habitants. The latter wished for agrarian reforms, but Papineau and the notaries quite convinced them that from England at least they had nothing to expect but confiscation, and the suppression alike of their laws and their religion.

The Militia Law had not been passed, but Dalhousie fell back upon an old order of the Council in 1787 and 1789. At once the different elements of opposition began to declaim against this illegality, and to advise people not to present themselves at the roll call. Despite murmurings the only offenders, either in non-appearance or behaviour,

were certain officers. The result was that many, including Papineau and his chief lieutenants, found their commissions cancelled, and the weeding-out process was extended to the Commission of the Peace. It was plain that both the Governor and the Opposition were in a fighting mood, and at the ensuing elections, thanks to the most unceasing appeals to passion and prejudice on the part of the French, not half-a-dozen supporters of Dalhousie were elected. He had no means of reaching the habitants, and Papineau might well think his victory was complete. The agitation was redoubled, and in the American newspapers there was a general opinion expressed that the end of British authority was near. This news reacted on Papineau and flattered his self-will, until he lost whatever caution he may have had.

Papineau was of course re-elected Speaker, but in consideration of his late manifesto, Dalhousie refused to accept him. There had been an attempt to nominate Papineau's rival, M. Vallières de St. Réal, and perhaps the Governor thought his disallowance of Papineau's election would mark the latter's loss of power. As the Assembly insisted on presenting an address in favour of Papineau's election, it was forthwith prorogued. The result was that the attacks on the Governor were redoubled, and every possible charge of tyranny and illegality was hurled at him. One of the newspapers provoked him to proceed against it for libel, but, although Dalhousie received an address from Montreal approving of the prorogation of parliament, he could not silence the Liberal press. Under its auspices meetings were held both at Montreal and Quebec, and the resolutions passed formed the basis of a petition which Viger, Cuvillier and Neilson took to London. Signatures had been obtained by the most persistent canvassing, and the size of the petition was taken by Papineau as a triumph. The population of Lower Canada was about 500,000, of whom the French claimed 400,000. The names of 80,000 petitioners were given, of whom all but 9,000 signed with

a cross. Had Papineau been backed up, as he declared, by the whole French Canadian population, he ought to have secured at least 150,000 signatures, according to a moderate calculation of Mr. Kingsford.

The petition embraced the usual charges against Dalhousie, and asked for his recall. A counter-petition for protection from the tyranny of the House of Assembly was sent from the Eastern Townships. It was stated that of their population of 70,000, there were 40,000 of British birth, and they defended the Canada Tenures Act and advocated emigration. The British Government, on the motion of Huskisson, appointed a committee to investigate the charges. The evidence they took should be read, if first-hand information of the state of affairs in Canada is needed. Huskisson is one of those English statesmen to whom justice has never been done. At a time when men openly declared that the only possible way out of the Canadian difficulty was the abandonment of the province, he made a splendid speech in which he tore in pieces the sophistries of the Assembly's defenders. It was quite true, he asserted, that Dalhousie had not acted in a strictly constitutional manner, but that was the fault of the Assembly; government was necessary even if the Assembly refused to act.

The Report of the committee of 1828 can only be touched upon very briefly, but it is well worth reading. The Tenures Act was maintained, and the mutation of seigneurial tenure advocated, with a recommendation that the French should not be disturbed in the peaceful enjoyment of their existing privileges. The Townships were to retain their rights, but land might be granted on French tenure when desired. Reforms in the electoral systems were proposed on the compound basis of territory and population, as in the upper province. Naturally the committee were severe on the monopolisation of the Crown lands by a few individuals. As to the question of the Civil List, it was agreed that, although the Crown's

claim to the revenue raised under 14 Geo. III. c. 88 was incontestable, yet it would be more expedient that the House of Assembly should control all the provincial revenues; the Governor, the Executive Council, and the Judiciary, however, ought not to depend upon an annual vote for their salaries. If the Assembly would grant this last condition, the committee were prepared to recommend that all the revenues, with the exception of the territorial and hereditary, should be surrendered by the Crown.

The committee could only see justification for the taking of provincial funds without the Assembly's consent in a very urgent case indeed, and they passed strictures on a system which had allowed Receiver-General Caldwell and certain sheriffs to cause great financial loss to the province. The Jesuit estates should be applied to the support of education, and the Crown and clergy reserves disposed of for settlement, the clergy being compensated in some other manner. Continuing their scarcely veiled censure of the existing system in Lower Canada, the committee considered that the interests of the province should be better represented in the Legislative Council, and that its members should not hold office merely during pleasure. The Assembly's objection to the presence of judges in the two Councils was sustained, although an exception was admitted in the case of the Chief Justice. However, any change in the Constitution should be carried out, if possible, by the provincial parliament. The union of the two provinces was at present declared to be inadmissible, but a sort of Customs union was hinted at.

Just before the committee rose fresh petitions came from Lower Canada, complaining of Dalhousie's prosecutions of the newspapers which had criticised him, and of his dismissal of militia officers for political reasons. The committee contented themselves by inserting the petitions in the appendix, and recommending an inquiry into the matter, as well as into the extensive remodelling of the Commission of the Peace. The whole tone of the Report

is curiously optimistic, and the only advice the members of the committee gave was their belief that "if the Legislative Assembly and the Executive Government of Canada can be put on a right footing, all minor grievances will be remedied." What that "right footing" was to be is not so much as hinted at; few people, even among the English "friends of Canada," considered it to be the introduction of the elective principle into the Legislative Council, and the transformation of the Executive Council into a ministry. However, the Report was never debated, for soon afterwards Huskisson ceased to be Colonial Secretary, and the policy was changed. Huskisson was a strong man, and would have insisted on a just return from the Assembly as the price for the carrying out of the Report. His successor in Wellington's high-Tory Cabinet was Sir George Murray, who had actually served as Lieutenant-Governor of Upper Canada for two months, and consequently considered himself an authority.

CHAPTER V.

ENGLISH *VERSUS* FRENCH.

DALHOUSIE was not the man to accept the affronts of the committee of 1828 without a struggle, and asked to be allowed to justify himself in the House of Lords. Wellington offered him the position of Commander-in-Chief in India, and he left Canada, only partially pacified; it was a slight consolation that addresses were sent to him from all parts of the province. The strong man was supposed to have failed, although he felt himself only abandoned by the British authorities. The Governors who came after him, Kempt, Aylmer, and Gosford, were especially sent to conciliate the French; that they failed is, perhaps, a proof that Dalhousie was not wholly to blame. However, Kempt's failure could scarcely be due to want of conciliation. He devoted all his attention to placating the popular leaders, already becoming giddy from their success in 1828. He managed to silence the acerbity of those Quebec newspapers which were on the side of the Government, but he had less success with those of Montreal.

With the Assembly great care had to be used. Papineau was accepted as Speaker, and it was promised that the clauses in the different Imperial Acts should be repealed so as to give the Legislature control of the revenue raised under 14 Geo. III. c. 88. Meanwhile an indemnity was asked for, and certain necessary reforms were recommended, especially the establishment of registry offices and a tax on "wild land." Much to Kempt's surprise, he only provoked a string of defiant Resolutions from Neilson, repudiating any right of the Imperial Government to deal with the revenue question. Most of the demands of the

great petition were repeated, and the final clause was the comprehensive demand for an inquiry into, and a remedy of, all abuses that might be found to exist, or had been petitioned against by the subjects of the province. Their victory in 1828 had encouraged the Liberals to think that if they only asked loudly enough they would gain their ends. Petitions were sent in from all parts of the province, in support of the most extreme demands of the Assembly; all the acts of Dalhousie were retold (and often so misrepresented as to be unintelligible), and obnoxious officials, and, in one case, a member of the House of Assembly, Christie, the future historian, were made to feel that the majority were as resolved to repress criticism as Dalhousie had been.

Even when the Assembly seemed to make a concession there was generally some ulterior motive. In 1831 the number of seats in the House was increased to eighty-four, the Townships receiving eight members. Most of the new representatives were enthusiastic supporters of Papineau, and of necessity all but ignorant of parliamentary usage. Before 1831 the Assembly had shown little regard for constitutional maxims, henceforth it showed none at all. We look in vain for any reasoned policy or any adequate remedy proposed by the majority. The only clear desire was for complete control over every department of government; the method proposed was the election of the Legislative Council by the constituencies. For the few years it was yet to exist the Legislative Assembly of Lower Canada abandoned the ordinary work of such a body and devoted itself to asking for and considering petitions of grievances from all quarters. With such an electorate as that of Lower Canada these proceedings passed for zeal in the popular service. The peasantry, conscious of no tangible grievance, were taught to see in the very efforts of the British Government to mitigate their economic difficulties a conspiracy against their religion and nationality. They rallied round the leaders who professed to

work only for their good, and knowing nothing of the justifiable limits of constitutional agitation, found themselves involved in a rebellion, when they only sought to rescue their beloved leaders from their common tyrants.

Kempt's policy of conciliation was rewarded by the Assembly; they voted a supply, but in their own way, and asserted their claims to control all the revenue. The Legislative Council only passed the Bill by means of a double vote on the part of the Speaker. Dalhousie was not forgotten, for the Assembly sent a fresh petition to England and passed a Militia Bill in which, as Dalhousie had opposed it, the control and appointment of the officers were virtually left in the hands of the French only. Demands were made for the reform of the two Councils, the exclusion of the judges from the Executive Council, and the establishment of a tribunal for the impeachment of guilty officials. The British ministry had been in correspondence with Kempt on the subject of the reform of the Councils. Kempt could express no decided opinion as to the best method, but suggested that more independent members should be introduced into the Legislative Council, and that certain leaders of the Opposition should be made executive councillors. Again Kempt received an unexpected response from the Liberals. At St. Charles on the river Richelieu, Mr. Debartzch, a seigneur, convened a great meeting of the inhabitants of the five counties on both sides of the river. These counties were the strongholds of Liberalism, and Debartzch at that time was an enthusiastic follower of Papineau; like most of the seigneurs, he deserted him before 1837, and was in consequence bitterly hated during the outbreak. The meeting indeed thanked Kempt for abandoning the arbitrary policy of Dalhousie, but declared that the only reform of the Councils they would recognise was that which had been set forth in the petition of 1828. The Resolutions were sent to Kempt.

Gradually the proposal that the Legislative Council should be made elective was becoming prominent, but it

had at first few supporters even among the Liberals, and in 1832 motions in that direction were overruled in the Assembly. It was not until Papineau broke with Neilson and the Moderates that his cherished scheme was openly proclaimed. The yielding policy of Kempt was to increase the difficulties of his successor, and the successor, Lord Aylmer, came at an awkward time. The British ministry, on account of political crises at home, had not been able to redeem its promises earlier, but one of Lord Aylmer's first negotiations with the Assembly was to ask it to vote a Civil List of about £20,000 in return for an Act of the Imperial Government which surrendered all the provincial revenues, with the exception of the casual and territorial, amounting only to £7,000. The Assembly refused to grant any Civil List for the King's life, asked for information as to the way in which the various items not specified were to be expended, and finally demanded that the Imperial Act (14 Geo. III. c. 88) should be repealed. The rearrangement of the constituencies under the Act of 1831 had introduced a more extreme element into the Assembly, and threats began to be made that no subsidy should be granted until the Imperial Parliament redressed their wrongs. These "wrongs" were the refusal to repeal 14 Geo. III. c. 88 unconditionally, to exclude the judges from the two Councils, to reform the Councils thoroughly, to surrender all provincial revenues to the Assembly, to apply the Jesuit estates to the support of education in the way approved of by the Assembly, and to allow all provincial lands to be held under the tenure known as *franc alev roturier*, a sort of French "free and common soccage."

Lord Aylmer attempted to be conciliatory, hoping that the extremists would spoil themselves by excesses, but even Neilson moved twelve violent Resolutions in which the state of the province was taken into consideration. It was acknowledged that matters had improved, but sweeping reforms were demanded. The crux of the situation was

that the Liberals demanded the unconditional repeal of all statutes conferring on Great Britain financial control over the colony; the ministry had long seen it was impossible to refuse consent to the repeal of these statutes, but struggled to preserve the officials, many of whom were able and loyal servants of the Crown, from the mercilessness of the Assembly. Neilson was becoming alarmed, however, at the recklessness of his colleagues, for now it was that one member, Mr. Bourdages, proposed the abolition of the Legislative Council and the refusal of subsidies, while another was in favour of the total abrogation of the Constitution of 1791. The Provincial Government were accused of being hostile to the diffusion of intelligence, and contrasted unfavourably with that of pre-conquest times, in a manner as complacently false to history as was impossible but in Canada in 1831. Papineau was as extravagant as any, and hinted at a time when Canada, having reached the present population of the United States, would find in the latter a friend against the tyranny of the Home Government. It is useless to trace the debate in detail; all the speeches on the Liberal side were in the same tone, doctrinaire and violent. When the inevitable petition was sent to Lord Aylmer, he asked, perhaps by order of the British ministry, if it contained all the grievances of which the Assembly complained. The bearers could not decide whether this extraordinary question was meant for a rebuke or not.

The Assembly continued to bring complaints against various officials, chiefly judges; the usual result followed, and finally by order of the British Government only the Chief Justice retained his seat in the Executive Council. The ministry of Earl Grey, never strong, except for the passage of the Reform Bill, could not pay much attention to Canada, and was unwilling to risk a rupture. No ministry until Peel's second term of office was secure of power, and in this circumstance we must find the cause of these repeated concessions. To secure the passing of a

Civil List the obnoxious Acts of Parliament were repealed ; if the Assembly would grant a Civil List, the commissions of the judges should henceforth be for life instead of during pleasure, and they should not sit in either of the Councils. Instead of accepting the offer, the various committees appointed to consider it rose without making any decision ; indeed it was often difficult to get a quorum of thirty in a House of eighty-four, when the proposal to be discussed did not please the majority, and yet they dare not reject it openly. Naturally, the Legislative Council generally rejected the Bills sent up to them, as this custom would prevent the passage of any calmly considered measure. However, the Assembly had gained their end. They now controlled practically all the revenues, and were supported by a formidable array of newspapers. *Le Canadien* and *La Minerve* in French, and the *Vindicator*, edited by the famous Dr. O'Callaghan, in English, were the most important. For a time, under the influence of the latter, a bid was made for the support of the newly-arrived Irish immigrants on the ground of religion, but at the last moment the Irish rallied to the authorities, much to the extremists' disappointment.

In May, 1832, at an election riot in Montreal, the troops had to fire on the crowd to restore order. Papineau was present at the inquest on the three victims, but his influence could not bring in the desired verdict of murder. Nor were Papineau's efforts to induce the Governor to order a special enquiry any more successful. If the French papers had been violent before, they knew no bounds after this unfortunate affair, and the fact that in the next few years Canada was ravaged by cholera did not prejudice the habitant in favour of the settlers who were said to have brought it. Papineau was clever enough to realize that the British ministry had no policy in respect to Canada ; it was the misfortune of Canada that the man who alone commanded confidence had no policy either, and Papineau was often urged on to steps from which even he shrank.

His one remedy was an elective Legislative Council, for then he would control two out of the three branches of the Legislature. It did not matter that, almost to a man, the English and Irish were against him, and that his power in the purely French constituencies, although supreme everywhere, was not everywhere unchallenged. The French who distrusted him seldom openly showed their sympathies, but the British press in Montreal and Quebec rivalled *Le Canadien* and its fellows in vituperation. Even the British who were opposed to the oligarchical system of government preferred it to the tyranny of the Assembly, and at last Neilson and his party abandoned Papineau; at the election of 1834 Neilson was defeated by a creature of Papineau and the rupture was complete.

To the end, however, Papineau was supported by his "*moutons*," as the habitants were called from their docility, and excited meetings were held all over the country; the speeches would be laughed at to-day, but it was otherwise at that time, when the very intangible character of the grievances alleged gave more scope to the speakers' rhetoric. The British, aided by men like Jules Quesnel, who had formerly supported Papineau, held meetings also, and sent petitions expressing their loyalty. Perhaps there would have been a stronger constitutional party but for the proposals frequently made, both in Upper Canada and in Montreal, that the latter city should be annexed to Upper Canada. This somewhat cooled French loyalty. When Aylmer ventured to reserve a Bill of Supply, he lost whatever popularity he had had, and finally in 1832 the Assembly declared for an elective Legislative Council by 34 votes to 26. Neilson and Cuvillier were in the minority, and on a proposal to secure the independence of the judges, Quesnel also quarrelled with his party. The resistance went further, and in his proposal to refuse supplies, Papineau only obtained 27 votes out of 68. Even so the Bill reduced or cut out the salaries of many

officials. The Legislative Council then addressed the Crown on the serious condition of affairs in the lower province, and pointed out that the majority in the Assembly would soon embroil the country with Upper Canada. For this hint at provincial disloyalty a rebuke was administered from Downing Street.

As the Assembly seemed determined to pick a quarrel with Lord Aylmer he prorogued it. During the recess meetings were held by the British party, and some of the French opponents of Papineau tried to calm the bitter feeling they had helped before to raise. When parliament met again Neilson vainly proposed a motion for a committee to establish better relations with the Legislative Council; the majority had decided that no business should be transacted with the Executive, and proposed to "consider the condition of the province" in a committee of the whole House. Aylmer sent messages to the House, explaining that the Supply Bill of last session had been rejected by the Legislative Council because of the clauses "tacked" on to it; the Executive had used certain funds at its disposal to pay salaries, but there was still a deficiency. The unwise conduct of the Assembly in insisting too much on its privileges, and the unconstitutional proposals to abolish the Legislative Council, were touched upon, and a hint was given that, if the Imperial Parliament did alter the Constitution, it might be in a direction unwelcome to the Assembly. The members of the Assembly received these messages with varied feelings, but the followers of Papineau were indignant; their indignation was not calmed by the statement of Aylmer that he could not issue his warrant to meet a charge of £7,000, the cost of various investigations by the House into the Montreal riot; he had no money, he declared, as the Assembly would vote no supplies. One member, Mr. Bourdages, who was Papineau's lieutenant in the Assembly, proposed to rescind the parliamentary rule which caused the Governor's permission to be necessary for the origination of a money grant; to

Cuvillier's assertion that the rule was borrowed from England it was replied that the request for permission was a mere form.

Papineau had meanwhile become involved in a personal quarrel with *The Quebec Gazette*, whose editor, once his ally, accused him of using his position as Speaker to secure immunity from giving satisfaction to the men he had insulted ; it was openly said that he was "a mere leader of the sans-culottes," on the British side. Papineau had his revenge in a savage attack on Lord Aylmer, whom he accused of bribing the judges, in language of the grossest violence. This attack was a prelude to the introduction, on February 17th, 1834, of the famous "ninety-two Resolutions." They were introduced by Elzéar Bedard, first Mayor of Quebec, in a debate by a committee of the whole on the state of the province. They can be read in Kingsford,¹ but except as a specimen of Papineau's general methods, they are scarcely worth reading. In form they can only be compared to the Grand Remonstrance of the Long Parliament. They affect to rehearse all the grievances and wrongs of the province, the oppression of Dalhousie, and the misgovernment of Lord Aylmer ; the history of the causes of the American Revolution was gone into, and American rather than British institutions were alleged to have been preferred by many who were not now acting with the Assembly. The whole system of colonial government was impeached, the method of appointing the Legislative Council, the financial arrangements, the appointment and behaviour of the judges, the claim of the Executive to be responsible only to the Imperial treasury for the expenditure of Canadian revenue, and, in fact, every detail of the administration to which the Assembly took exception. Lord Aylmer was impeached, and Hume, O'Connell, and Viger (the Assembly's Agent in London) were thanked, and asked to continue their services on behalf of Canada. The most audacious statement of all

¹ Vol. IX., pp. 544—554.

was that the majority of the 75,000 non-French inhabitants of Lower Canada were at one in their views with the 525,000 French.

It was in vain that the more moderate members, led by Neilson, attempted to expose the travesty of the truth which these extraordinary Resolutions presented. All the benefits of the British connection were enlarged upon, and the folly was pointed out of supposing that after so many grievances had been redressed, even the oligarchy could affect to any large extent the population of Canada, composed as nine-tenths of it were of habitants and farmers. The fiftieth Resolution had contained a scarcely veiled threat to form a Republic in imitation of the United States, and to send this to the Imperial Parliament was as wise as to insert the clause calling on O'Connell and Hume for help. Neilson proposed alternatives to the ninety-two Resolutions which expressed clearly all that the Liberals had fought for, but in more decent language than that of Bedard. The ninety-two Resolutions were the work of Papineau, and he rallied his party to their support. He commanded 56 votes to Neilson's 24, and probably this represents the true strength of each in the Assembly.

Aylmer was not a strong man, and he foolishly received an address embodying the ninety-two Resolutions; he should have adjourned the House rather than have allowed them to be voted, for it was near the end of the Assembly's legal tenure of power, and henceforth till the dissolution there was a daily adjournment, for want of a quorum. His best justification was the abandonment of Dalhousie in 1828. The British ministry, unpopular, and disliked by William IV., was dismissed in November. The Legislative Council petitioned the Crown against the Resolutions, and even Lord Aylmer could not refrain from asking the members to convey his message to their constituents: he thought it would be a difficult task to convince men of the existence of evils which they were not personally conscious of, for

except within the walls of the House of Assembly there was everywhere profound tranquillity.

The Assembly, however, cared nothing for the rebuke, for they had made an alliance with some of the leading Radicals of England, including Hume and Roebuck. The latter was appointed Agent in 1833, and to his advocacy in the Imperial Parliament the ninety-two Resolutions were committed. It is impossible to credit Roebuck with sincerity, for he had been in Canada and was said to have supported Dalhousie. That the British in Canada were anything but favourable to the Assembly must have been known to him; but, secure in the support of his fellow-Radicals, he forced the ministry in 1834 to consent to the appointment of a fresh committee to consider the affairs of Canada, by representing that the population of Lower Canada was in a state of open rebellion, and that Upper Canada was not in a much better condition. Drawing on his personal knowledge, as he professed, he described the two Councils as a "petty and vulgar oligarchy," and contrasted the different degrees of prosperity in the United States and Canada. He extenuated the conduct of the Assembly as being due to circumstances, and re-told the history of Craig and Dalhousie in Canada. He had gone too far in his attack on the Colonial Secretary, Stanley, but, although the latter had no difficulty in showing the exaggerated character and general unreliability of Roebuck's statements, the committee met. Its task was, however, not to consider the grievances of Upper and Lower Canada, as Roebuck wished, but to find out how far the remedies proposed in 1828 had been applied.

The committee, of which Roebuck and O'Connell were members, admitted that the Government had done its best to remedy the grievances of Canada, but that, in some cases, the animosities and heats prevailing between the different branches of the colonial Legislature, and between the Assembly and His Majesty's Government, had prevented complete success. It was considered better not to express

a more definite opinion, but to leave the future administration of Lower Canada to the Government responsible for it. It is significant that the evidence of the numerous witnesses was not submitted to parliament. This Report did not please Roebuck, and he wrote to the "central and permanent committee" at Montreal; it was about this time that the Liberals began to create a system of organization, by which they hoped to have in every village committees of their supporters through whom they could influence public opinion. This letter actually counselled armed resistance, if another peaceful effort to secure the wished-for reforms should fail. It was quite unnecessary to give any stimulus to O'Callaghan and his brother editors, but when articles in *La Minerve* and *The Vindicator* advised that preparations for a revolutionary movement should be made, the British population were not slow to take warning. A petition was sent to Lord Aylmer by them, all the more impressive from the fact that 400 French landowners in the district of St. Martin signed it. In his reply Lord Aylmer asserted that he preferred worth to nationality as a ground for claims to favour, and he adverted to the unpleasant fact, which Lord Durham also remarked, that the native-born Canadians treated the English-born immigrant as a foreigner.

At a great convention held in Montreal the language of the ninety-two Resolutions was applauded, and the Report of the late committee unfavourably canvassed. One of the speakers was Girod, a Swiss adventurer, through whose specious misrepresentations the inhabitants of the district of Two Mountains joined the rebellion. As the champion of the habitants, he attacked the Land Company's Charter, and Resolutions in which Lord Aylmer was again insulted were sent to Roebuck and the Assembly's friends in England. At the elections, to which this meeting was a prelude, Papineau managed to secure the defeat of every man of mark, English or French, who had shown the slightest hostility to him. As a reply to Papineau's victory

and the ninety-two Resolutions, constitutional societies were formed by the Moderates, both at Montreal and Quebec, and at a meeting in Quebec a declaration was drawn up and assented to by practically all the English-speaking population. It was designed as a rallying-point for English, Irish, and French alike who were disgusted at the tyranny of the Assembly's majority. Appeals were made to all the English-speaking population of the colonies for help to maintain the British connection on the basis of justice and reform. The new societies were as determined on reform as the Assembly, but it was not to be at the expense of either nationality. In their appeal to all the colonies for the verdict, they dimly pointed to the Dominion which was to settle all disputes.

Government could not be carried on without money, and therefore Spring Rice, the Colonial Secretary, authorised an advance of £31,000 to the Governor-General to discharge the officials' salaries. Soon after this the ministry fell. His successor, Lord Aberdeen, was a member of Peel's first administration, which was in a minority in the House. For the benefit of the House of Commons alone, the new Assembly declared its agreement with the ninety-two Resolutions in February, 1835. After twenty-five days the House was prorogued, as it showed no inclination to vote supply, and did not reply to the Governor's communications. The Moderates presented their petition to the House of Commons by the hands of the old reformer of 1828, John Neilson, and sought help in the coming struggle from Upper Canada. The Assembly, as before, handed in their petition through Roebuck, whose speech was of the usual kind. He had the audacity to characterise the men who signed the Moderates' petition as being "only loyal when loyalty was favourable to their oligarchy"; it was obvious he had not read their demands, and, after his letter to the Montreal committee, his speech was only an impertinence. Lord Aberdeen's real reply to Roebuck and Papineau is contained in a dispatch dated February 11th.

He appealed to the recommendations of the committee of 1828 as the standard by which the sincerity of the British Government should be judged ; in so far as it attempted to carry out these points, which the Assembly itself had accepted, the censures of the Assembly upon its good faith were undeserved. No one can doubt that the King and his ministry were sincere in their profession that, in sending out a special commissioner to investigate the position of affairs in Canada, they were only swayed by the desire to redress the colony's wrongs. However, all conciliation was refused by the Assembly ; Papineau was at the parting of the ways when Lord Gosford arrived in Canada, and that he took the wrong way may be ascribed to Lord Glenelg, Aberdeen's successor.

Peel's first administration had been succeeded in April, 1835, by that of Lord Melbourne, which relied for its support on the Radical section. Lord Glenelg was the new colonial minister, and it is not too much to say that the inept policy which he pursued towards Lord Gosford and Canada was largely responsible for the stiff-neckedness of Papineau and his party. A firm and just man like Aberdeen might even yet have solved the Canadian problems, but Gosford's perverse "conciliation" and Glenelg's weakness blinded Papineau to his danger. The priests and seigneurs saw it and abandoned him, but his faithful "*moutons*," whose bravery in the dark days of 1837 and 1838 was worthy of a nobler leader, remained. Lord Durham read the closing scene of the tragedy well. In a dispatch to Lord Glenelg, dated August 9th, 1838, and marked "Secret," he writes that the rebellion could not have been avoided under the attendant circumstances of such mutual provocation, but that it was precipitated by the British from an instinctive sense of the danger of allowing the Canadians full time for preparation.

Gosford, who succeeded Aylmer in August, 1835, was accompanied by two fellow-commissioners, Sir George Gipps and Sir Charles Grey. They had received precise

instructions as to their behaviour ; they were to conciliate the Assembly and carefully investigate their complaints. With such instructions, and with the disgrace of Dalhousie, Kempt, and Aylmer before his eyes, we can understand that Gosford was not likely to countenance a very heroic policy. He had come too late, for the British held that the time for parley had passed ; the obdurateness of Papineau played the game of the British extremists well enough, and from the moment Gosford arrived in Canada Papineau was doomed. Out-voted in the Assembly, unjustly as they believed, the British of Lower Canada determined that, come what may, the farce should not continue. If Upper Canada would not take them in, they would appeal to the United States. Every movement of the "Patriots" was carefully noticed, and at last even Gosford had to take action. Papineau did wisely in fleeing, for his followers were indeed sheep, when the time came, both in docility and helplessness. The men of Gore, on the borders of Upper Canada, and the English from the eastern provinces were ready to march when the signal was given ; to oppose the attack of the half-million British, Papineau could only count, as the event proved, upon a few hundred habitants and professional men, and the handful of Mackenzie's partisans in Upper Canada. The Americans, upon whose sympathy he relied, had only the most lukewarm enthusiasm for the displacement of a British colony by a French peasant Republic.

It is very necessary to understand that the behaviour of Papineau towards Lord Gosford, and his refusal of all reforms save one—the abolition of the Legislative Council or its transformation into an elective body—were part of a preconcerted plan. Constitutional agitation had won the Reform Bill, but we can understand how Papineau and his English supporters confused the two sides of the Chartist movement. All the talk about imitating the colonists of 1776, if redress were not given, ludicrous though it sounds to-day, was applauded by many even of the moderate

Whigs in England. Perhaps Papineau knew that it was unreal, but many of those who had supported the ninety-two Resolutions began to fall away in the month succeeding Lord Gosford's advent to office, including Elzéar Bedard, their proposer; he accepted office under the Crown, and Papineau had to fall back on the more extreme men, and on his English allies, who, in the *Canadian Portfolio* and in letters and speeches, were indefatigable in justifying him. Papineau had to cease his agitating or to make good his threats, when the British ministry finally challenged him by the Ten Resolutions of Lord John Russell on March 6th, 1837.

CHAPTER VI.

THE REBELLION.

ON October 27th, 1835, Lord Gosford opened parliament in a very long speech, asserting the good intentions of the Imperial Government, and its wish to remedy all complaints; he would condemn no man, and he insisted that nationality was not a claim or a prejudice in the conferment of office. Henceforth Blue Books would be regularly presented to the Houses, and Bills would only be reserved under exceptional circumstances. In short, he promised in the name of the Imperial Government to remedy every grievance that had ever been alleged by the Assembly except one, the method of appointment to the Legislative Council. He added words of encouragement to the British party, and seemed to say that the Imperial Government had been impressed with the recommendations in their petition. The Governor laudably tried to please all parties in conformity with his instructions, and of necessity he failed; for all concessions were refused by Papineau if the one great subject of complaint was not settled to his liking. Unlike Mackenzie, he did not ask for responsible government, but for government at the will of an irresponsible demagogue.

In the debate on the answer to the Address, Papineau and O'Callaghan, who, on the death of Bourdages, became his lieutenant, refused to recognise the legality of Gosford's Commission as it proceeded from the King alone, and they claimed that the House of Assembly was the fittest organ to give information on the state of the province. The reply, as finally agreed upon, ignored the commissioners as such, and declared that the House truly represented in

its demands the wishes of the province; that the great attention given to its demands must convince the Imperial Government of their justice. Gosford himself, as a new Governor, did not fail to receive a delicate personal compliment on his extensive powers. The compliment, however, did not prevent the Assembly from asking for £22,000, the arrears of their contingent expenses, and disregarding the statement that the provincial accounts showed arrears of £135,617. Gosford professed to "cheerfully" agree to the Assembly's demand, much to the disgust of the British; in the Legislative Council a Bill continuing Roebuck as Agent was thrown out, and Papineau declared himself a Republican, who would welcome American emissaries. However, while he talked, others were acting.

In December, 1835, the British of Montreal organized the first rifle corps, eight hundred strong, and offered it for official sanction. In the face of Gosford's refusal it was nominally disbanded, and a bitter peroration was inserted in the notice to the Governor of that fact. Sir John Colborne, the Governor of Upper Canada, was known to be in sympathy with the British, from his speech of January 14th, 1836, and the drilling went on, but in private. The new Governor of Upper Canada, Sir Francis Bond Head, had foolishly laid the Commissioners' Instructions before the Assembly of that province; the result was that the Radical Speaker Bidwell pointed out in a letter to Papineau how they condemned the idea of an elective Council. It was useless for Gosford to secure the Colonial Secretary's consent to lay his instructions before the Assembly. Papineau had meant to attack Sir John Colborne for his speech, and now, thinking that he had an ally in Bidwell, he turned on Lord Gosford as he had on Lord Aylmer. It did not matter that the so-called double-dealing of the Imperial Government was not justified by the perusal of the actual Instructions, and that, according to the latter, the Imperial Government would surrender

all the provincial revenues in return for a permanent Civil List and adequate protection for the judges and other civil servants. Papineau was already beyond his own control. In the course of the debate on Colborne's speech, one Resolution included the words "a good and responsible system of local government." What this meant was not stated, but it proved to be the burning question after the Union of 1840. It was, however, quite unmentioned in the ninety-two Resolutions, and was not a war-cry of Papineau. The Speaker was asked to intimate to the other British provinces of North America, Lower Canada's willingness to co-operate in all constitutional measures for their mutual interest. The appeal fell on deaf ears, and even in Upper Canada, where Bidwell secured it a reception, the succeeding House of Assembly expunged Papineau's letter from its journals.

A succession of attacks on unpopular officials followed; generally the victims were judges or sheriffs, and frequently men who had supported Dalhousie. It was, however, necessary to vote supplies, if only to provide for the contingent expenses of the House, and therefore Resolutions were passed granting six months' supply from January 15th, 1836. It was declared that this was not to be taken as a precedent, and that petitions for redress of grievances were to be sent to the King and parliament. The Legislative Council refused to pass the Bill under those circumstances. The petitions sent to England by the Assembly are remarkable; the demands for reform are couched in respectful language, and a new item is added, that, conformably to the principles and practice of the British Constitution, the Executive Council might be rendered directly responsible to the representatives of the people. Perhaps this insistence on the principle of a responsible executive was due to Wolfred Nelson, afterwards a prominent Liberal politician; even in the petition, however, it was recognised that there was a difficulty in accommodating the English colonial system to the corollary of this demand; but it was insisted,

justly enough, that the colonial minister was scarcely fitted, from his necessary imperfect information, to have the final decision on Canadian affairs. There were one or two notes of defiance; for instance, it was declared that the Colonial Secretary had no right to prevent the House from discussing anything it pleased, and that Lord Aylmer's behaviour had endangered "the safety and connection of the colony as a dependency."

Unfortunately, the Assembly could never understand its own constitutional position. It actually proceeded to discuss Bills repealing the Canada Tenures Act of 1826, and to amend the Constitution of 1791 on the lines approved of by the Assembly. On the 21st of March Gosford prorogued the House; he informed the members that, as they had voted no supply, the Government would be compelled to use the money it had in hand, and to leave further measures to the Imperial authorities. This was the fourth year of the failure to vote supplies. In 1833 the "tacked" clauses caused the Supply Bill's rejection; in 1834 no Bill was voted, and in 1835 the Assembly refused supplies. Finally, in 1836, the Six Months' Supply Bill was rejected by the Legislative Council, and the end was near. In September—October, 1836, the House sat again for thirteen days, and for three days in August, 1837; it had no better conception of its duties than to vote amendments of the Constitution for which it could not hope to secure acceptance, and it was finally dismissed by Gosford in an indignant speech.

The Moderates, organized in constitutional societies, gave up all hope of justice from the Assembly, and prepared for the conflict that could not be delayed. They had money, and could procure arms; there can be no doubt that they were eager to decide the quarrel by force at any time in the year 1837. The Liberals were perplexed, for few of their number contemplated an appeal to force, nor had they money to buy arms and ammunition. Some few rifles were smuggled in from the States, but, as after events

showed, very few even of the little band of extremists possessed reliable weapons. However, both parties could drill and establish corresponding societies and clubs. The British organization was called the Doric Club; it seems to have been of Scottish origin, but the question is obscure. The Liberals, on their part, had an organization known as the Sons of Liberty, on the model of the American Revolution, formed at a later date but of a similar character to the Doric Club.

On October 15th, 1836, the last of their six Reports was handed in by Sir Charles Grey and his fellow-commissioners. These Reports were probably seen by Lord Durham, and afford much information on the various burning questions. On the whole, the commissioners justified the British party and the Imperial Government, and, while recommending certain minor concessions to the Assembly, they hinted rather strongly that the total suspension of the Constitution was preferable to any tinkering at details. The Radicals, under Hume and Roebuck, naturally refused to accept this Report as final. Lord John Russell, the Chancellor of the Exchequer, met with great opposition when, on March 6th, 1837, he proposed his famous ten Resolutions on the Canadian troubles. Long, and in parts irrelevant, speeches were made by the Radical leaders, but on the 24th Russell managed to get the Resolutions passed. A timely quotation from *La Minerve* was of great assistance: "Immediate separation from England is the only means of preserving French Canadian nationality." The House took alarm, for it saw how very little Roebuck and his party understood the French programme, or how greatly they misrepresented it.

The Resolutions were couched in unaggressive but decided language. They simply reaffirmed the position taken up by Lord Aberdeen and the commissioners who had just returned from Canada; the sting, however, lay in the eighth Resolution authorising Gosford to pay the arrears of salaries, etc., amounting to £142,160 14s. 6d., from revenues

already in the hands of the Receiver-General. As a matter of fact, this provision was not taken advantage of, for the actual payments made came out of the military chest. However, the Imperial Parliament had at last put its foot down, and Papineau had to make a swift choice. It was made for him by his followers; meetings were held all over the province, at which Gosford and the British Government were denounced in unmeasured language. Everywhere Papineau had a triumphant escort of followers, and threats were made against those who dared to fall away. The climax came when, at the meeting of the "six counties" on both sides of the river Richelieu, south of Montreal, which was held at the village of St. Charles, on October 23rd, a pillar, surmounted by a cap of liberty, was set up amidst a great deal of theatrical display, and, with many fiery speeches, thirteen Resolutions were passed, flinging defiance at the Government. Wolfred Nelson was in the chair, and Papineau was present with many of his lieutenants. Even the dedication of the pillar to himself could not reassure Papineau, for on the ground various companies of the Patriot Volunteer Militia were going through their drills, at the command of officers cashiered by Gosford. The latter's patience had been exhausted by the open disloyalty of these men and certain justices of the peace, who had retired or been removed from their posts; on June 15th he had issued a proclamation of warning against disloyalty, and on September 2nd, in a dispatch to Glenelg, he recommended the suspension of the Constitution. He still hoped for peace in his dispatches, but he asked to be relieved of his post in favour of some one who was not so committed to a policy of conciliation. He felt he had nothing to hope for in the way of support from Lord Glenelg, but that in the hands of Colborne, who since June had been in command of the Imperial forces in Lower Canada, Papineau would be powerless.

No one recognised better than Papineau that resistance was hopeless when power was in the hands of Colborne,

the veteran soldier. The language used at St. Charles was thoroughly disloyal and warlike; Papineau, in his reply, hesitated between surrendering to his followers or rebuking them. Perhaps he was intoxicated somewhat at the comparison of himself to O'Connell, and by the proposal to establish a "Papineau tribute." At any rate, while objecting to active hostility, he counselled passive resistance on the pattern of the American colonists: "Let no one use any article upon which duty had been paid, and let every man dress only in the plain homespun of the country." His hearers were astounded at their chief's reluctance, Nelson and O'Callaghan especially so. It was too late to draw back now, for on November 6th a collision took place in the streets of Montreal.

On the very day that Papineau was hesitating at St. Charles an enthusiastic meeting of the British party was held at Montreal. At that meeting the Irish definitely ranged themselves alongside the English and Scots, for the Roman Catholic Bishop of Montreal, Lartigue, had declared against Papineau. This was serious enough, but its effect was slight compared with that of the language used by *The Vindicator* about the English troops, and the offers made at St. Charles to induce them to desert. On November 6th the Patriots and their newspaper probably remembered their unwise words. The Sons of Liberty, mentioned a few pages back, were holding a meeting in Montreal upon enclosed premises. Feeling by this time ran high, and a loyalist crowd soon gathered. It was small, and when the Sons of Liberty, to avenge desultory stone-throwing and revilings, charged it in a solid mass, it had to retire, but not for long, as various members of the Doric Club gathered to assist it, and the French, in their turn, had to flee. The troops, who sympathised but little with the Patriots after their recent language, did not rush very eagerly to check the riot, and before they arrived the premises of *The Vindicator* had been gutted. The rebellion had begun, but "rebellion" is a woeful misnomer for the events in Lower Canada.

On November 9th Colborne definitely took over the government from Gosford, who, in a dispatch of the 14th, insisted on being recalled. It was high time, for even in the parishes near Montreal the Patriots had terrified judges and suitors alike from using the courts, and British settlers were fleeing for their lives to the towns. Still, there was no definite plan of campaign with Papineau, although it could not be hoped that Colborne would overlook the meeting at St. Charles. The only definite organization for resistance seems to have been at St. Charles itself, where Thomas Storrow Brown, an American, who had gained great influence among the Patriots, essayed to form an entrenched camp. After the affray of November 6th the leaders of the French had left Montreal, for regiments of volunteer cavalry, riflemen, and artillery were being raised by the Government, and troops summoned from Upper Canada, while public processions and assemblies were forbidden. The Commission of the Peace was remodelled, and finally warrants were issued for the arrest of certain prominent Liberals on November 11th. The Government was well served with spies, and Colborne was not afraid to strike hard.

As we know from Lord Durham's Report, the police of Lower Canada were practically non-existent, and the warrants had to be executed by a band of volunteer cavalry. As a party of these under Lieutenant Ermatinger were returning to Montreal, their prisoners were taken from them by a mob organized for that purpose by some of the leaders still at large. This first success elated the Patriots considerably, and they gathered in strength at St. Denis and St. Charles, both villages on the Richelieu. Warrants had been issued against Papineau, Nelson, O'Callaghan, and Brown by the 16th, and Papineau had no choice now. Escaping from Montreal, he sent the Swiss Girod to raise the county of Two Mountains at St. Eustache, and himself hastened to join Dr. Nelson at St. Denis.

Except for the peasantry at St. Denis, St. Charles, and

St. Eustache, there was no sign of the rising Papineau had threatened. The Government had no difficulty in obtaining men, for even those who did not join with Viger and Quesnel in denouncing Papineau remained neutral. The fort at Chambly on the Richelieu was strongly garrisoned by Weatherall with volunteers, regulars, and artillery, and it was decided that Colonel Gore should proceed from Sorel, at the confluence of the Richelieu and the St. Lawrence, with 250 men and one gun, to arrest Nelson and the other leaders at St. Denis; Weatherall, on November 22nd, received orders to march from Chambly at once, so as to effect a junction with Gore on the following day at St. Charles. The news of Gore's approach was brought to Nelson and Papineau, and the capture of Lieutenant Weir and his despatches made it clear that it was true. Papineau asserted afterwards that Nelson advised him to flee to the States, but at the time and afterwards the latter insisted that the flight was due to Papineau himself. Nelson had fortified an old barn and a house by the roadside, and when Gore's men came in sight he and his peasants made a stout resistance. Gore's men had had a cruel march, and after twenty-four miles of journeying through mud, ice, and rain, they were not fit for battle with foes under cover. For nearly five hours they struggled, and then Gore was glad to abandon his howitzer and retire. He had lost six men killed and ten wounded, while thirteen of the defending force fell. The Patriots were jubilant, but it was their last success.

Weatherall had better fortune than Gore, and, as a general, Brown was inferior to Nelson. Around the house of that Debartzch who had formerly been a local leader a rude entrenchment was thrown up, but no attempt was made to hold a neighbouring hill which defended the position. Although the Patriots at St. Charles were better armed and more numerous than those at St. Denis, the best leader they could find was the American, and his lieutenant was the village *cure* M. Blanchet, one of the few

clergy on Papineau's side at this time. At first Brown did his best to feed and encourage his followers; according to his account the latter were insubordinate, and when he himself met with an accident, his power was at an end.

It seems that Colonel Weatherall had detached many habitants from him by a message promising pardon, and Brown, being unwilling to risk too much in the cause of his unruly followers, rode over to St. Denis and announced that all was lost, at the very moment Nelson's men were rejoicing over their victory. Brown's presence at St. Charles could not have affected the result, for after a brief parley Weatherall's men bombarded and stormed the Patriots' position, and in an hour all was over. The insurgents' loss was heavy; thirty prisoners were taken to Montreal, and the fugitives carried the news of the disaster far and wide.

When Girod, at Papineau's command, attempted to raise the district of Two Mountains, he found it difficult, as the news of St. Charles effectually damped the Patriots' ardour. However, matters had gone too far, and a mistaken notion of chivalry compelled Dr. Chenier, one of the leading Liberals of the district, to join Girod. The loyalists had fled in terror to Montreal, and St. Eustache, where Dr. Chenier lived, was soon full of Patriots from the neighbouring villages. Some arms were carried off from the Government stores at the Indian Mission, and Girod by his audacity actually persuaded Chenier to disregard the remonstrances of his most intimate friends. It is impossible to excuse the folly of Girod and Chenier in exposing their deluded followers to the attack of an overpowering and exasperated body of troops. Colborne made all preparations, and then, with horse, foot, and artillery, to the number of 2,000, marched on the doomed insurgents. Chenier and some of his men had taken refuge in the village church, but it did not afford protection long. The door was forced, and all was over. Chenier fell, together with seventy of his followers, and then began a scene of horror which was never forgotten in Lower Canada. The

people of St. Eustache had not themselves been conspicuous among the insurgents, but the volunteers, especially those from the district of Two Mountains, were not in a mood to make fine distinctions. Colborne could restrain the regulars, but no power on earth could hold back the men who for years past had been subject to every form of petty oppression and had finally been compelled to flee for their lives. Part of the village was burnt, and afterwards half-burned corpses were picked up among the ruins.

Next day the column marched to St. Benoit, but no resistance was offered. Unfortunately, this did not save St. Benoit from the fate of St. Eustache, although the officers did their utmost. The column returned in triumph to Montreal, and the French vied with the English in welcoming the regulars and volunteers who were pouring into Lower Canada from the neighbouring provinces. There were, however, regrettable incidents enough; the Lieutenant Weir mentioned as having been captured by Nelson's men near St. Denis was brutally cut to pieces with swords on attempting to escape from his guards, and a poor habitant, named Chartrand, who was serving as a loyalist volunteer, was murdered by some of the baser Patriots. These incidents did not conciliate either the regulars or the volunteers, and many petty retaliations were made in the shape of house-burning and looting. However, the insurrection was too thoroughly crushed to make resistance possible. Girod had shot himself when attempting in vain to escape, and Wolfred Nelson was arrested by the volunteers in seeking to cross the frontier. The arch-insurgents Papineau and O'Callaghan, more prudent and less warlike, had already reached the United States, and a price was put upon their heads. Even Lafontaine, the future Premier, who had been one of the extremists, prayed Gosford to convoke the Assembly, and, finding him obdurate, made his way to Paris. Lafontaine's visit was due to the publication of an argumentative proclamation on November 29th against the insurgents.

Happily for Lower Canada, Colborne held the real power, and he soon proved how little sympathy the insurrection had even among the habitants. It is worthy of note that at St. Eustache the insurgents were promised by their leaders the abolition of tithe and seigneurial dues, as well as the lands of the loyalists ; and the insurrection had been threatened as a protest against any tampering with the rights of the Church or with the Custom of Paris !

When the first news of the troubles reached England there was great excitement. Many of the Radicals talked as if they hoped the French were going to emulate the deeds of the revolted colonists of 1776, and exulted. However, Lord John Russell, backed up by Whigs and Tories alike, took a firm line. On January 26th, 1838, a Bill was introduced to suspend the Constitution of Lower Canada for three years, and to provide for the dispatch of the Earl of Durham as Special Commissioner. Roebuck had by this time lost his seat at Bath, but he was heard at the Bar of the House against the Bill, as the Agent for Lower Canada. He could only find sixteen supporters to oppose the two hundred and sixty-two votes for the Bill. The new Commissioner had no easy task, for, on the top of the troubles in Lower Canada, came the news of Mackenzie's mad attempt in Upper Canada. It is necessary very briefly to sketch the story of the troubles which led to this fresh insurrection.

CHAPTER VII.

THE UNITED EMPIRE LOYALISTS.

IT has been related how the United Empire Loyalists were given a separate Government in Upper Canada. The first Governor was Lieutenant-Colonel Simcoe, under whose wise rule the new province flourished exceedingly. The population increased in his time from 12,000 to 30,000, and it was a population in which loyalty was a creed held almost to fanaticism. The settlers of Upper Canada were at first nearly as homogeneous in their religions as in their political views, being generally Episcopalians. However, the fertile lands of Upper Canada could be obtained on such liberal terms that many keen Republicans left the new United States in favour of the British colony. Simcoe did not refuse them, but he cautiously made them settle in the interior, and lined the frontier with Loyalists only. Simcoe did a great deal for the colony, but he was bitterly opposed to the United States, and at the same time as he made roads and organized the new province, he seems to have intrigued with the Indians and the discontented Americans in the neighbouring states of the Union. Lord Dorchester was alarmed, and friction ensued when he attempted to assert the somewhat shadowy claim of the Governor-General to control a Lieutenant-Governor. The British Government supported Dorchester, and Simcoe returned to England, greatly to the disgust of the Loyalists as a whole, but to the satisfaction of a few in Upper Canada who disliked his inflexible honesty.

When he had gone the evils of land-grabbing and official corruption could not be suppressed. Peter Russell, the Administrator of the province till the arrival of General

Hunter, took the lead and secured huge grants of land for himself. Hunter arrived in 1799, and carried on in some ways Simcoe's policy of watchfulness against the Americans. His rule coincided with troublous times, and in 1804 the famous Alien Act was passed. It was a copy of similar legislation in Great Britain and Lower Canada, and empowered the Government to arrest and deport from the realm men of suspected loyalty, who had not resided in the province six months. The loyalty of some of the American settlers was more than doubtful, but the Alien Act could be made a powerful engine of oppression.

From 1806 to 1818 Sir Francis Gore was Lieutenant-Governor. He was a high Tory and, supported by the United Empire Loyalists, he ruled with unchecked power. He was really dependent on the official class, but, as these were Tories to a man and controlled the House of Assembly there was little trouble. Most of the leaders lived in or near Toronto (York it was then called), and as they had founded the province, they claimed a right to control its destinies. We must not be misled by the Radical views of Lord Durham into construing this monopoly of place and power as mere selfish tyranny. The loyalists had suffered much for Great Britain, and saw with indignation that the Americans, not content with having robbed them of their possessions in the old colonies, were seeking to share the new lands they had first found. Moreover a large number of the settlers were German Protestant refugees, and had scruples as to the lawfulness of bearing arms. Upper Canada had to fight for the Imperial connection, and the war of 1812 was primarily one for the conquest of Canada.

For many years there was no regular opposition to the Tory views; the later settlers were too busy cultivating their lands to mix in politics. In accordance with the Constitution of 1791, vast reserves of land were made in each township for the clergy and for the Crown, and these naturally remained uncultivated, as did most of the huge grants of Crown lands secured by members of the party in

power. Canada suffered from lack of population and capital, and many of the improvements, hardly made, were injured by the vast tracks of wild or semi-wild land that intervened between the estates. Roads were too frequently bad or non-existent, and mills, schools, churches, bridges—in fact, most of the outward signs of civilisation—were absent in many places. We can understand how little sympathy there was between the Loyalist and the Republican, and Gore, though an amiable man, was not capable of striking out in the right direction of creating a better feeling. He leaned on the Tories, and most of the half-pay officers or soldiers who emigrated to Upper Canada before the end of the Napoleonic wars were Tories by instinct or interest.

Gore had to face opposition at times, but careful investigation of the questions at issue does not show any especial merit in his adversaries. The first case was that of Justice Thorpe, an intriguing man, who, discontented with his own position, made a bid for popularity by advocating political ideas of an advanced character. He formed an alliance with an ex-United Irishman, Sheriff Willcocks, and managed to get a seat in the Assembly. His real aim seems to have been to secure the post of Chief Justice of Upper Canada, and, failing in this, he began to talk with the American element of separation from Great Britain. Gore appealed to the home authorities, and secured Thorpe's recall to England. Sheriff Willcocks, who had even more ambitious plans than Thorpe, established a newspaper, *The Upper Canada Guardian*, to advocate views so extreme that the paper is thought to have been subsidised across the frontier. An action for libel against him was not pressed, but Willcocks' real views are shown by his death before Fort Erie in 1814 as a colonel in the American army.

There arose out of the cases of Thorpe and Willcocks the famous pamphlet issued by John Mills Jackson, an English traveller, professing to expose the corruption and

misgovernment in Upper Canada. The very escape of Willcocks was seized upon by the Assembly as a proof of the freedom of speech enjoyed in Upper Canada. As a matter of fact, there was little beyond theoretical grievances at this time in Upper Canada. The Government was paternal, but in that it followed the English model. The new state of things arose after the war of 1812. Gore had retired into the background for three years, while Upper Canada, under the gallant Brock, made a splendid defence against the invaders. With peace Gore returned, but the condition of things was changing every day. The American troops carried back wondrous tales of the fertility of the land, and thousands came as settlers to the land they had failed to conquer. On the whole, they were a distinct gain to the country by their industry, but they were advanced Radicals in politics, and few were Episcopalians. Side by side with them there settled in Upper Canada immigrants from the British Isles, some disbanded soldiers, others artisans, labourers, or middle-class professional men. Many of the lower classes were disciples of Cobbett and the Radicals, and most of the Irish and Scots were non-Episcopalian Protestants.

In the stream of English immigrants came the famous Robert Gourlay. Failing in most things, generally rather on account of his advanced Radical opinions than from want of industry, Gourlay at last came to Canada and set up as a land agent. Immigration was increasing rapidly, and Gourlay, wishing to encourage settlers, sent round in 1817 a list of "Thirty-one Questions" to the various townships, with a view to publishing a "Statistical Abstract of Upper Canada." The questions were generally unobjectionable, but one, which asked for the views of the township as to the causes retarding the country's prosperity, trod on dangerous ground. The answers generally instanced the wild lands held by the Crown, the clergy and private owners; there was a lack of capital, a want of settlers, and a defective system of colonisation. It happened that

Gourlay was acting with an American named Bidwell, who, though formerly Attorney-General of Massachusetts, had been compelled to flee; possibly Bidwell's defence of his conduct was true, but it was unfortunate that his past was open to attack. The American settlers were very unpopular with the British Government, and efforts had been made to keep them out. In the Assembly, however, voices were raised in their favour, and complaints had also been made sufficiently in the spirit of Gourlay's questions to alarm the authorities.

At this time there began to exhibit itself a close community of interest between the leading families of the United Empire Loyalists. Intermarriage was of necessity confined to a small circle in a sparsely populated land, and most of the sons of the leading families had attended the school of the well-known Dr. Strachan. Strachan had been invited over by Simcoe, but when his patron left too early for the proposed system of national education to be carried out, he was persuaded to remain and establish a private academy. Strachan was a Scotsman, whose mother was a member of the Secession Church, and whose father was a Non-juror. Educated a Presbyterian, his sympathies drew him over to Anglicanism, and he became a tower of strength to that Church in Canada. He was a hard hitter in self-defence, but he seems to have been a courteous and kindly man, and was a true friend of education. He was bitterly, often unscrupulously, assailed by his opponents, but he lived down all opposition, and died Bishop of Toronto.

In 1817 Strachan, previously its chaplain, was made a member of the Legislative Council; Gore had already placed him on the Executive Council in 1816. John Beverley Robinson, first Attorney-General and afterwards Chief Justice of Canada, had been one of Strachan's pupils, and both he and others of his fellow-pupils who attained office in Upper Canada were accustomed to look to their late schoolmaster for guidance in their new positions.

There was, as has been said, a certain family relationship between the leading men of Upper Canada, but the term "family compact," first applied, it seems, by Mackenzie in 1833, was a sneering reference to the Bourbon league of the eighteenth century. Strachan and his friends were emphatically the Tory party of Upper Canada. They held fast to the old colonial tradition that the Executive of Lower Canada was, like the Governor, only responsible to the Crown.

They had no wish to oppress any individual, but they looked to the rewards of office as being theirs alone; any claim to share these on the part of the later settlers could only spring from disloyal Republican views, and must be resisted. It is unfortunate that while early Radicalism in Upper Canada had a distinctly Republican tendency, the love of power had become so ingrained in its possessors that, when the British immigrants of a later date demanded equal rights, they too were treated as prospective rebels; and yet, because they were not rebels, they met with scant sympathy from the Republican American element. As became Strachan's pupils, the Tory leaders were keen Anglicans, and felt as much interest in the clergy reserves as in their own huge grants of wild land. The Americans and many of the British settlers, being Methodists, Presbyterians, and Baptists, were indisposed to bear the burden of supporting their own ministers while at the same time their farms were injured by the existence of the clergy reserves. At first the Episcopalians were in a majority, but after 1820 they could no longer claim to be the most numerous body of Christians in Upper Canada; it was their misfortune to be led by Strachan, whose very virtues made him unfit to preserve a minority in its rights.

Such being the state of affairs in Upper Canada towards the close of Gore's administration, we cannot be surprised that, when Gourlay attempted to agitate, and finally sent an address to the Prince Regent, reiterating the old charges of corruption and hinting at the superior excellence

of the United States, he was prosecuted. It was Gourlay's ill luck that Sir Peregrine Maitland succeeded Gore in July, 1818. Maitland was a high Tory, and although he must have seen that Gourlay's complaints were not unreasonable, he shared the dislike of the Upper Canada ruling class to any symptoms of Liberalism. It was cleverly suggested in the Governor's speech to the Assembly that the Convention which Gourlay had proposed could only have for its end the severance of Canada from Great Britain, and the Assembly promptly denounced such conventions as an usurpation of its powers. "Gagged, gagged, by Jingo!" was Gourlay's comment on the Act forbidding these meetings, and for these words, which headed a written protest against the Act, Gourlay was tried twice as a libeller. When it was found impossible to secure a conviction in the face of popular sympathy, Gourlay was proceeded against as an alien, under the Act of 1804. Maitland, by describing Gourlay as half Hunt, half Cobbett, had alarmed Bathurst, the Colonial Secretary, and nothing was feared from the Imperial ministers. Gourlay was accused by a man of notorious character as an evil-minded and seditious person who had not been in the country six months. Gourlay, technically, had not been for the last six months continuously in Canada, but his foes would show him no mercy. Thoroughly broken down by imprisonment, for he was never a strong man, Gourlay was condemned by Chief Justice Powell to quit the country. He went and the Tories breathed again, but Bidwell remained, and around him gathered a more formidable opposition than Gourlay had been.

CHAPTER VIII.

THE BEGINNINGS OF RADICALISM.

IN January, 1821, the Assembly was increased to thirty-eight members, under a new Act on the basis of a compound area and population scheme. It was impossible to prevent the inevitable result that the new members were frequently not at all Tory. At present, however, there was no Radical party, and the Government had little to fear during this parliament. Bidwell, Gourlay's friend, had been elected, but the Tories managed to get him expelled by raking up his shady antecedents in addition to his American citizenship. In this parliament sat Dr. Baldwin, Robert Baldwin's father. He was a Moderate Liberal, but he was powerless to secure the repeal of the Act of 1804. The Radicals, however, were delighted when they succeeded, after many rebuffs, in getting Marshall Bidwell elected in his father's place. Around Marshall Bidwell was to grow up the new Radical party.

Among the new immigrants were many Presbyterians, and they were well represented in the Assembly of 1821. In 1823 William Morris of Perth, one of their members, carried a Resolution in the Assembly, claiming an equal share in the clergy reserves for the Church of Scotland, on the ground that, being established by law in Scotland, it could profess that its ministers were included in the term "a Protestant clergy" of the Act of 1791. This was the beginning of a bitter struggle, and it is necessary to go into it rather in detail, as Lord Durham asserts that it was an important factor in the Upper Canada troubles. So long as the Episcopalians were in a majority their view prevailed, namely, that the clergy reserves were for their

clergy only, in lieu of the right to the possession of tithes which they enjoyed in England. The Imperial Parliament bore them out in this for some time, and although Bathurst, by advice of the law officers of the Crown, allowed Maitland in 1819 to grant £100 out of the Reserves Fund to a burnt-out Presbyterian congregation at Niagara, he distinctly said the "clergy reserves were not for dissenters." In 1819 the number of clergy in Upper Canada was so small that the Imperial Parliament granted them a Charter of Incorporation, with power to lease some of the reserves, so that more clergy might be supported. As, however, freehold was favoured in Canada where land was cheap, negotiations were entered into with the British North-American Land Company to buy one-third of the reserves. Although the negotiations miscarried, the other religious bodies were alarmed, and began to challenge the Anglican claims.

Then began an agitation for the division of the clergy reserves among all the denominations, and, later, for their conversion to the support of education. Resolutions were sent to the Imperial Parliament, and the Anglicans, as supporters of the Tories, received little sympathy from the Assembly. In 1823 Strachan had forwarded an ecclesiastical chart to the House of Lords. The Rev. Egerton Ryerson, at that time a newly-ordained Methodist preacher, took exception to the statement that the Episcopalians outnumbered the other bodies, and henceforth led the religious opposition in Upper Canada. He was an able man, but, although a Radical in some things, he was also an enthusiastic loyalist. It is difficult to gauge the actual numbers of the different denominations in Upper Canada, but the probability is that the Episcopalians were less numerous than Strachan believed, and more numerous than his opponents allowed.

Strachan made a plucky fight for what he held to be the rights of his Church. Maitland was favourable to his views, and in 1820 had already been consulting Bathurst as to

the establishment of rectories in the manner provided for by the Act.¹ From this time till the departure of Colborne negotiations went on between the Anglicans and the different Governors as to whether these rectories should correspond to the area of the parish served by them, or merely to the church and churchyard. As usual, Colborne was unwilling to give needless offence, and at last persuaded Strachan to consent to the smaller area. Patents for the erection of fifty-nine rectories were prepared, and forty-four had been signed before Colborne handed over the governorship to Head. News of these proceedings came to Speaker Bidwell, and there was great indignation. Colborne, however, was only following out his instructions, and the law officers of the Crown subsequently upheld his action. In the Report Lord Durham practically finds in Colborne's creation of the rectories one of the main causes of the trouble in Upper Canada, but it is due to the memory of a man too often misrepresented to point out that he attempted to carry out a difficult task in the most conciliatory manner.

We must keep in view this question of the rectories all through the history of the next few years. The people of Upper Canada envied the Americans their churches and schools, and regretted the poverty which prevented them from possessing the like. Clergy and schoolmasters were very scarce in Upper Canada, and the clergy reserves brought in very little, while at the same time they injured the province. No one believes in the expediency of their creation, but the right of the Anglicans was incontestable. It was never challenged till 1824, and the pleas alleged by the Radicals are of little weight. The Scottish Church, perhaps, had a claim as a Protestant established Church, but the Anglicans pointed out that most of the Presbyterians of Canada did not belong to that Church, but to independent Churches in America. The Methodists, probably the most numerous denomination, were broken up

¹ Can. Arch., Q. 328, I., p. 27.

into many bodies, and, at the time when the Act was passed, were scarcely a non-Anglican sect. The Baptists were few in numbers, as were the remaining sects, and the Roman Catholics, like the Presbyterians, received a small grant from the funds of the Canada Company.

It was alleged that the author of the clause, Lord Grenville, informed Viscount Sandon in 1791 that the reserves were to be applied to the support of any clergy not Roman Catholic. Strachan, in his famous "speech on the clergy reserves," maintains that Lord Sandon's words had been misunderstood; Lord Grenville had merely said that he had no objection to aid being given to the Presbyterians when the Anglicans had been provided for. However, the other version obtained credence, and the demand continued. Strachan attempted to conciliate the opposition by proposing a state subvention to the non-Anglican bodies, but the more extreme Radicals took to proposing that the reserves should be applied to the support of education. It may be that this was one of the causes for the lukewarmness of Ryerson and the Methodists. They included in their ranks many United Empire Loyalists and settlers from Great Britain, and it was to them that Head turned in his election campaign.

Lord Durham well remarks that it was difficult to find any clear line of division or definite objects among the parties of Upper Canada. The actual number of the extreme Tories was small, outside the official class, and their opinions were not so much convictions as the result of their position as office holders who had to carry out the policy of Downing Street. Nor were the extreme Radical-Republicans much more numerous. Perhaps, among the farmers who had left the United States after 1812, and among the English disciples of Cobbett and Hunt, there was little encouragement needed to advocate annexation to their southern neighbours. The vast majority of the people of Upper Canada were not politicians, except so far as they sought to develop their country by good laws and

just government. Many of them were ex-soldiers and half-pay officers, whose inclinations led them to support the established Government. They felt their exclusion from power and the scarcely veiled contempt of the *soi-disant* aristocracy of Toronto, not less than did the numerous professional men who had arrived in Upper Canada in the recent immigrations. They formed a sort of Liberal-Conservative party, and it is to their disgust at the excess of each of the extremist parties in turn that we owe the peculiar political instability of the various Assemblies of Lower Canada.

The elections of 1824 returned an Assembly in which the "reformers," as they delighted to call themselves, were supreme. This did not give them very much real power under the existing Constitution. A Bill for the naturalisation of aliens after a seven years' residence in the country was submitted to the Assembly by Maitland, in accordance with the orders of Lord Bathurst. This Bill was said to have been drafted by the Home Government in a manner believed to be acceptable to the province, but it aroused great opposition. A more liberal measure proposed by Bidwell in 1827 was passed after a few alterations had been made in the Legislative Council, but it proved the occasion for a collision between Maitland and the Assembly. Already in 1825 the Council had thrown out the Supply Bill owing to the Assembly's modifications, and in 1826 the Assembly had asked the King to exclude the judges from the Executive Council, and to make them independent of the Crown. The country was not prosperous. Like Lower Canada, it suffered from the reaction after the war of 1815, and from the protective duties on wheat levied by Great Britain. The province had no ocean port, and the troubles in Lower Canada affected the upper province adversely. It was in vain that one Imperial statute gave Upper Canada an increased share of the duties levied at Montreal and Quebec, and another admitted her wheat on easy terms. Upper Canada was becoming little better than a halting-place for immigrants to the Western States

of the Union, and capital and population were both scarce in comparison with area.

Maitland must be held responsible for many of the troubles of Upper Canada. He was an indolent man, who did not trouble to acquaint himself, as Dalhousie did, with the real needs of the province, but contented himself with attempting to repress all criticism. One of the most virulent critics was the future rebel leader, William Lyon Mackenzie, at that time editor of *The Colonial Advocate*. He had drifted to Canada and journalism through a variety of adventures, as draper, bookseller, engineer, and politician, and brought to bear on his editorial work a fluent pen and a fiery impetuosity, which too often undid any good he had previously effected in calling attention to abuses. Mackenzie was a born agitator and politician, a warm friend and a bitter enemy. Unfortunately, he was destitute of self-control, and lacked the power of articulating the grievances which he felt. Journalism did not bring in large fortunes in Upper Canada, but it made an editor important, and Mackenzie soon became a valuable supporter of the Radicals. He criticised the oligarchy severely, without offering any very clear alternative policy. Mr. Kingsford refuses to accept the theory that to Mackenzie was due the first advocacy of responsible government, but Mackenzie's insistence on the responsibility of the Executive to the wish of the people was as near to that theory as a colonial statesman dare go in those pre-Reform days. His son-in-law, Mr. Lindsay, gives a very different picture to that which Mackenzie presented to the outsider; we may admit that he held views as to the federation of British North America and on other matters which were afterwards accepted, but he spoiled all by his impatience of control, and his utter want of consistency. Mackenzie wrote at high tension, and foolishly thought himself bound to defend his words when he had worked off his passion. His views varied with every burst of passion, and yet all must be reconciled.

Very early in his career Mackenzie attacked the administration of the Post Office. He claimed that the profits should be retained in Canada, quite oblivious of the fact that the so-called profits were largely swallowed up by the transit dues which Great Britain paid. He never looked below the surface of things, and moreover he confused the individual with the office, and was led into statements often unjust and seldom capable of proof. Maitland championed his official friends, and consequently objected to the placing of a copy of the *Advocate* beneath the statue erected to Brock in 1824, and in 1826 struck out of the Estimates a proposed grant to Mackenzie of £37 16s. for publishing the debates. These were small things, but they won sympathy for Mackenzie and Mackenzie's hatred for the ruling class. He became even less restrained in his editorials, denouncing Justice Boulton and his son, the Solicitor-General. Foolishly enough, a crowd of Tory young men wrecked the printing offices of the *Advocate* in Mackenzie's absence. The newspaper would have ceased to appear in a short time owing to debt, but £625, which Mackenzie received as damages, gave it a fresh lease of life, at the same time securing Mackenzie new friends. Bidwell had been one of his solicitors, and as though to identify the rioters with the Governor and his friends, Colonel Fitz-Gibbon, the future defender of Toronto, at that time Deputy Adjutant-General, made a collection among the Tories to pay the fine.

The very next year occurred the Forsyth case. Forsyth, a tavern keeper at Niagara, had illegally erected a high fence, cutting off the view of the Falls. Everyone complained, and Maitland, as though to show his power, sent troops to pull down the fence; an appeal to the law courts could not have failed to obtain the same result, but Maitland's action secured popular sympathy for the law-breaker. The Governor went further and refused to allow two officers to be examined by the Assembly on the affair. The matter was carried to England, and next year

Maitland was removed to Nova Scotia. Even the Duke of Wellington could not justify his action, and yet, before Maitland left, the "amoval of Justice Willis" and his treatment of Francis Collins had roused indignation enough to give the reformers a great victory at the elections.

Willis had come out to Upper Canada as puisne judge in 1827, hoping to be made head of a new Court of Equity. He was a second Thorpe in some ways, and his wife, Lady Mary, by daring to dispute the claims to precedence of Lady Sarah Maitland, daughter of the Duke of Richmond, made him unpopular with the Governor and Toronto society. Maitland did not like his assumed superiority, and he also offended Beverley Robinson, whose talents he had affected to despise. As a matter of course, he gave ear to the reformers, and when, in 1828, Francis Collins, who was, like Mackenzie, a bitter journalistic opponent of the Tories, was brought before him on a charge of libel, he allowed him to attack Attorney-General Robinson for dereliction of duty. Robinson was indignant, and, as Willis entirely exceeded his powers in censuring him, was not slow to take his revenge. Willis published a notice about a new book by himself, which seemed to refer unfavourably to Canadian jurisprudence, and then, because he disliked Sherwood, the other judge, refused to sit on the Bench, alleging that, in the absence of Chief Justice Campbell, the two puisne judges were incompetent to hold a Court. The reformers supported Willis, but he was again unquestionably wrong, as was decided afterwards. Finally Maitland suspended Willis, and the latter sought redress in England. Before Maitland himself left, he secured the condemnation of Francis Collins on a charge of libelling the Attorney-General. Collins was largely to blame, for he mistook Robinson's forbearance for timidity, and was not satisfied with a former narrow escape. This time, although his fine was paid by subscription, he had to undergo twelve months' imprisonment, and find sureties for three years.

CHAPTER IX.

THE RISE AND FALL OF MACKENZIE.

ON November 4th, 1828, Sir John Colborne began his long rule in Upper Canada. He was a man of an altogether different stamp from Maitland. He had no personal enmities, and only wished to carry out the orders of the Imperial Government. He had naturally little sympathy with Liberal ideas, but he was a good friend to education and the general welfare of the province. It was due to him that Upper Canada College was founded, and he sympathised with the good as well as the bad points in Strachan's policy. The weak part of his government was his sympathy with the "family compact," but it was hard for any Governor to dispense with them. This sympathy led him to refuse Collins' petition for release. However, the popular feeling was reflected by the result of the election of 1829, for the new Reform Assembly took up Collins' case. Bidwell was elected Speaker by three votes, and Mackenzie and Dr. Baldwin were members. Peter Perry, another reform leader, was already in the House, and Robert Baldwin secured a seat at York, on the elevation of Beverley Robinson to the position of Chief Justice, a few months later.

The new House by 37 votes to 1 declared that it should be the responsible adviser of the Governor, not the Executive Council, which had ruled so badly; it was hoped that under Colborne the administration of justice would be above suspicion. Colborne was in a dilemma at this address, and his reply was that it was less difficult to trace political dissensions than to efface them. He had already expressed his opinion to the Colonial

Secretary that some means should be taken to prevent the Legislative Council from being controlled by the Executive Council ; however, affairs in Lower Canada were threatening and Colborne could only obey orders. Perhaps he would have acceded to the request of the Assembly and released Collins, but Robinson could not forget how the latter had given Willis a chance to insult him.

Mackenzie was in his element as a member of the Assembly, and at once proceeded to hunt for grievances,umping all together as of equal importance. The question of the Executive Council was still burning ; for, under the system then followed, it could secure the rejection of any Bill in the Legislative Council, and could and did persuade the Governor to strike out any item of expenditure from the Estimates voted by the Assembly. The reformers might propose what they liked, but there their power ended, for in Upper Canada the Government had generally a surplus of revenue independent of the Assembly. Mackenzie proposed to ask the Home Government for a remedy against the continuing in office, by the Governor's favour, of an Executive out of harmony with the Assembly. When the address was presented to Colborne he showed his disapproval of Mackenzie's theories by the curt formula, "Gentlemen of the House of Assembly, I return you thanks for your address."

The death of George IV., in June, 1830, necessitated a new Assembly. The Reform Assembly had not been a success ; fresh settlers were arriving in Upper Canada, and the Tories were roused to unwonted exertion. Already Mackenzie had alarmed moderate men by his reckless speeches, while Colborne was inspiring hopes of sane measures of reform. In January, 1831, a Moderate was elected Speaker by 26 votes to 14, and it was seen that the reformers were in a hopeless minority. The two Baldwins lost their seats, as did Dr. Rolph, of whom more will be said later ; Mackenzie, Perry and Bidwell were re-elected, and, unfortunately for the reformers, they were

largely identified with Perry and Mackenzie instead of with Bidwell. There was no longer any question of Executive *versus* Assembly, but the overwhelming defeat of the reformers only complicated matters. The lead fell to Boulton and Hagerman, friends of Robinson, who possessed his arbitrariness without his talents, and the Moderates in the Assembly agreed upon very few questions. Before matters resolved into chaos a Bill was passed, called by the reformers in derision the "Everlasting Salary Bill"; it established, on the English plan, a Civil List of £6,500 to pay the stipends of the Governor, three judges, the Executive Councillors, and the law officers of the Crown. In return, the Crown surrendered the revenue of £11,000 which had made it independent of the Assembly. Thus one great source of trouble in Lower Canada disappeared in the upper province, and, but for the unwise conduct of Hagerman and his friends in prosecuting Mackenzie, the rebellion in Upper Canada would have been impossible.

Mackenzie refused to see that his position as an agitator was now dangerous, and he attacked as usual. Beverley Robinson would have treated him with contempt, which would have hurt Mackenzie more, but Boulton was as impetuous as his opponent. Hagerman and Boulton knew they could rely on the support of the office-holders, and ventured also to threaten Mackenzie with Colborne's displeasure. Mackenzie, in his recklessness, got a committee to consider the constitution of the House, in the spirit of Burke in 1780, but the members of the committee were the perpetrators of the abuses. He next attacked Boulton's conduct in respect of the Upper Canada Bank, and it was decided that he must be silenced.

Mackenzie had published as an election paper extracts from the Journals of the House. Boulton and his friends attempted to secure his condemnation for breach of privilege, because he had not included the appendix; this was too barefaced, even for the parliament of 1830. Encouraged

by this, and by a Report of the committee he had secured, Mackenzie began to organize petitions, both to the King and to the Assembly, for the reform of abuses. He had also commented in his paper upon the reception given by the Assembly to petitions, and his language was strong, even for a Mackenzie. The "sycophantic Assembly" joined with the "mercenary Executive," and despite Bidwell's various amendments, Mackenzie was expelled from the House by 24 votes to 15. Colborne did not interfere, for the House was as tenacious of its privileges as if it were keenly "reform." The sympathy Mackenzie met with in the province alarmed the House, and a vote was passed that the clergy reserves should be devoted to education.

Ryerson was supporting Mackenzie at this time, and he was re-elected for York. The answer of the House was a declaration that he was incapable of sitting in the Assembly, for he had given his opponents a handle by another attack on the House. Five times was Mackenzie prevented from taking his seat, despite frequent re-elections, and he was finally removed by the sergeant-at-arms, although Colborne had allowed him to take the oath before the clerk of the Privy Council. In 1832, after his second expulsion, Mackenzie went to England, and presented a memoir to Goderich, the Colonial Secretary, by the assistance of the Radicals. Even as presented by Mackenzie, the facts were undeniable, and a dispatch to Colborne followed. In this visit Mackenzie received encouragement from the Radicals, who were supporting Papineau, and perhaps then it was that he first entertained the idea of following in the latter's footsteps.

The population of Upper Canada increased rapidly between 1830 and 1832, but the newcomers brought the cholera with them, and great distress prevailed. Boulton and Hagerman led the party who wished to annex Montreal to Upper Canada, but they could not carry the House with them, and soon the question of Mackenzie's memoir came

up. The dispatch which Colborne received stated the willingness to remedy all grievances, including the presence of an unlimited number of office-holders in the Legislative Council and Assembly. Both branches of the Legislature denied the existence of the grievances complained of by Mackenzie, and the Assembly added epithets uncomplimentary to the latter. Boulton and Hagerman felt themselves affected by the dispatch, and spoke of it in violent language. They were removed from their posts, because they were in opposition to the Imperial policy, and had to go to England for pardon. Boulton and his friends, in their first anger, hinted, like Papineau, at a possible separation; it was as genuine as Papineau's threat, but Mackenzie had not a good example set him.

When Mackenzie returned he had a slight consolation in being elected as a councillor and first Mayor of Toronto, then recently incorporated. It is said by Dent that his election was due to an intrigue against Dr. Rolph, the choice of the Moderate Liberals. Dr. Rolph deserves some little notice here owing to the part he played in 1837. Despite Dent's attempt at whitewashing, we cannot acquit Rolph of cowardice or treachery or both. At this time he was a doctor and barrister in Toronto, highly respected for his talents. Colborne had wished to make him head of a college of medicine, despite his views, and his loyalty was never suspected. In the Assembly his imposing figure and splendid eloquence won him attention, but there was a certain shiftiness about him which repelled confidence. He nominally supported the Moderate Radicals under Bidwell and Baldwin, but the tempter came later in the person of Mackenzie. He felt himself less popular than his colleagues, and, had Head given him his confidence in 1836, would probably have turned Tory. He seems to have desired to be the Franklin of the new revolution, but he was at once ambitious and timid, and dared not support Mackenzie when that support might have scored the victory.

Perhaps the most universally respected man among the Radicals was Robert Baldwin. His talents as a barrister were acknowledged, and even the bitterest Tories never breathed a word against his loyalty. There was an air of austere virtue about him which prevented his ever inspiring enthusiasm as Mackenzie did, and it was unfortunate for Upper Canada that Baldwin was a doctrinaire. He could never support any policy whole-heartedly, and his moderation caused him to be shouldered out of the way by less able but more assertive men. His real chance came after the Union in 1840, for he only sat for a short time in 1829, and he lost his seat in 1830. He thus could do little to check Mackenzie, and the leader of the Moderate Radicals was Bidwell.

No more unfortunate choice could have been made, for Bidwell, although an able and honest man, was lacking in moral courage. He never professed to be an enthusiastic supporter of the British connection, for the treatment he and his father had received from the "family compact" precluded that. However, his father's career as well as his own was likely to be brighter in Canada than in New England, and, had his talents been rewarded as they deserved, he would have remained a passive supporter of Great Britain. He was, however, suspected by the Tories, quite unjustly as Head afterwards admitted, and when the British Government ordered that he should be raised to the Bench, Head refused. On the defeat of the reformers by Head, Bidwell, unlike Rolph, was content to wait for the usual reaction, and no one ever seriously suggested that he and Baldwin countenanced Mackenzie. At that time he was an ailing man, and Head used his physical infirmity as an additional lever to work upon his fears; Bidwell left Upper Canada and refused all invitations to return. Had he been bolder and Baldwin less unpractical, Mackenzie would never have gained the support he did. The key of the situation lay with Egerton Ryerson and the Methodists; Bidwell and Baldwin should have moulded them into a

Moderate Liberal party, whose demands would have won a hearing from England. As it was, Mackenzie alone among the Radicals offered a clear-cut policy, and Ryerson's quarrel with Mackenzie threw the Methodists into the arms of Head and the reactionaries.

Mackenzie as Mayor of Toronto was not exactly a success. He displayed great heroism during the visitation of the cholera, but his head was turned by his new dignity. His crowning folly was the publication in his journal of a letter from Hume. In this letter the phrase "freedom from the baneful domination of the Mother Country" occurs. The sentiment was not stronger than the Radicals were displaying in the Imperial Parliament with regard to Papineau, but the United Empire Loyalists were up in arms. The Moderate newspapers attacked him, and Ryerson and he definitely separated. Rolph saw in the retirement of Baldwin in 1830 from political life a chance for himself. He did not stand for the new Assembly, but as he had now begun to practise as a physician in Toronto his relations with Mackenzie became more intimate. The latter was drawing very near to Papineau, and at a convention held in Toronto, March, 1834, resolutions were carried to refuse supplies unless control of all provincial revenues was granted to the Assembly; the Legislative Council, in accordance with Papineau's plan, should be made elective, and the Executive Council made responsible to the representatives of the people. How far Mackenzie understood what he wanted is doubtful, and a visit he paid to Quebec in November, 1835, to strengthen the alliance was not calculated to enlighten him very greatly.

In the Assembly of January 15th, 1835, Bidwell was elected Speaker by a majority of four. Hume's letter had not converted the Methodists altogether, but there were six members of a new Conservative party in the House. Mackenzie could not see the difference in his position now any more than in 1831. His newspaper had ceased to

appear, and just before the election he had founded the Canadian Alliance Society; he was its corresponding secretary. The programme of the Alliance was practically that of the Toronto Convention, and, if Mackenzie noticed the partial defection of the Methodists, he would find consolation in the rally to the reformers of the more recent Roman Catholic settlers. As a reward for his self-restraint under Boulton's attack on him with reference to Hume's letter, Mackenzie secured the appointment of the committee which drew up the celebrated "Seventh Report on Grievances"; it may be compared to the ninety-two Resolutions of the Lower Canada Assembly. The Report in some ways foreshadowed Lord Durham's recommendations. It scathingly criticised the action of the Executive in pleading responsibility to London alone, while at the same time it disregarded the Colonial Secretary's orders. It was pointed out that the Governor neglected it, contrary to the Constitution; military Governors were a mistake, and in the present state of things, when the Governor did not consult the Executive, it was necessary to hold him personally responsible. There was, however, no suggestion as to the way in which the Executive might be made responsible, and the one definite proposal, as in Lower Canada, was that the Legislative Council should be elected.

Although this Report was never formally adopted by the Assembly, copies were sent to England. As usual, the British Government asserted its wish to redress all grievances; it had ever before its eyes the lesson of 1776, and it was alarmed by the unfavourable comparisons that were everywhere made between the prosperity of the States and the backwardness of Canada. Colborne would never have administered Upper Canada on the lines of this Report, and therefore a new Governor was sent out at the same time as Gosford, to carry out the new policy. Sir Francis Bond Head is depicted by Lord Durham in vivid colours, for the two men were mutually antipathetic. We must make allowances for this, but, even then, Head's appointment to

succeed Colborne is amazing. The new Governor possessed many excellent qualities, and he was neither a knave nor a fool, as he is too frequently depicted. Upper Canada was his first government, and he brought to it a wild exuberance of energy similar to that which had carried him across the Pampas. There was about him an air of frankness and good-fellowship, which deceived men into thinking he agreed with them; whereas he was one of the most obstinate of men, and, although well-meaning, he was too fond of devising theatrical effects to ensure the successful working of the plot.

It was perhaps due to his confusion with a kinsman that Head found himself placarded in Toronto as a "tried reformer," and he cannot be blamed for not acting up to an unauthorised description. His first step was unwise, for, with a view of creating a sensation, he allowed the Assembly to become acquainted with the Instructions he had brought. It was seen that the concessions Head had been sent to offer were little more than an acknowledgment that the House had a right to remonstrate against any action of the Governor. Bidwell did not voice the reformers' wishes when he communicated the Instructions to Papineau, but they shook men's confidence in Head considerably. On his part Head took a dislike to Mackenzie and Bidwell at once, but he was forced to respect Baldwin, and Rolph seems to have won favour. It is the difficulty in reading Head's views that, like Mackenzie, he changed them day by day. He soon became convinced that the "Grievance Report" was unjustified, and determined to discredit its authors. Lord Durham tells the story of the appointment and secession of Rolph, Baldwin and Dunn from the Executive Council, and the election campaign in which Head triumphed. He is, perhaps, too severe on Head, for Mackenzie could by this time count on little support, except among the extreme Radicals. Baldwin, too, is not wholly free from blame. Perhaps, in disgust at what he considered Head's duplicity, he made no effort to check Mackenzie,

and Rolph certainly allowed the latter to broach dangerous subjects in his anger.

We can understand Mackenzie's feelings, for he had actually been beaten at the polls, and, as he believed, unfairly. At this date, however, we can see that Head had no need to seek a majority by unconstitutional means, for, had he been content to wait, the rising tide of loyalty would have swept away all opposition. It is necessary to go back a little. The resignation of Baldwin and the rest caused great indignation, and it was said, quite wrongly, that Head had fallen into the hands of the "family compact." He possessed enough natural perverseness of his own, and when the House, on receiving a report as to the resignation of Baldwin, Rolph and Dunn, decided to refuse supplies, except for certain purposes, Head believed his opinion of the reformers justified; Bidwell, the Republican, had set the tone of the reform party, and all were alike. He had his eye on Papineau as the ally of that party, and when Bidwell foolishly presented the latter's circular letter to the House, Head seized it as the opportunity for another tableau. In answer to an address from the home district on Papineau's letter, he pictured himself at the head of a contented anti-democratic Canada, facing an invasion of aliens invited by a few discontented politicians. "In the name of every regiment of militia in Upper Canada, I publicly promulgate, Let them come if they dare."

Patriotism was never lacking in Upper Canada, and the British Constitutional Society was formed to preserve the British connection. It was in vain that the Moderate Radicals, under the presidency of Dr. Baldwin, established the Constitutional Reform Society, and treated their own loyalty as beyond doubt. They would not disown Mackenzie, and in the new Assembly they were in a minority of 18 to 44. The Moderates, mainly Methodists, had rallied to the Government, and even Bidwell lost his seat; only Rolph remained of the old leaders. Many of the reformers in parliament held extreme views,

among whom was Dr. Duncombe, afterwards a rebel leader, who, through Hume, made the wildest allegations in the British parliament against Head's conduct. Mackenzie became a changed man, and gave up all his faith in constitutional reform. He started a fresh journal, *The Constitution*, in 1836, on the anniversary of the Declaration of Independence. His articles were often so wild as to be almost nonsense, but Head was content with his victory, and despised him too much to take any notice. This contempt was worse than death to Mackenzie, and he began to organize meetings of the extreme Radicals in the outlying districts. He became bolder, and talked of an armed procession. Men were drilled, ostensibly to cause a more impressive effect, and finally Mackenzie talked over the question of resistance with a few choice friends, such as Matthews, Lount, and Duncombe. Head's recklessness helped on the movement.

The Governor had made a sort of triumphal tour through the province, and was highly satisfied with himself. He wrote dispatches to Glenelg describing his proceedings, in terms which alarmed that sedate person. As Head actually won the election, Glenelg had to congratulate him, but the Governor was not pleased when he received orders to appoint certain reformers, Bidwell among others, to places. He refused, and threatened to resign; his position was certainly badly paid, and the new proposals to give the Assembly control of all the revenues, and to concede responsible government, alarmed him. Head sympathised with the plan of the "family compact," by which the Lower Canada difficulty should be solved by the partial dismemberment of that province.

When the new Assembly met, it did not show much inclination to carry out the "economic reforms" which Head had promised during the election campaign. There was a difficulty as to the disposal of the clergy reserves, for the Methodists still hesitated between division among all denominations and their application to the support of

education. Huge votes were made for improvements, regardless of the enormous debt of the country, and the fact that commercial troubles in the United States had hit Canada hard. Finally, the discontented were tempted by the evacuation of Upper Canada by the regulars. Colborne had asked Head how many troops he could spare, and had been informed that the militia were able to defend Upper Canada. Although the troops were gone, several hundred stand of arms remained at Toronto, protected only by constables.

The temptation was too great for Mackenzie. He and his friends hated Head bitterly, but they were not averse to remaining British subjects on their own terms. In conjunction with Lount, Matthews, and a few others, Mackenzie discussed a plan for seizing these arms and proclaiming a Provisional Government. A convention was to be held at Toronto early in 1838, and the Radicals thus gathered together were to force Head to admit Rolph, Baldwin, and Mackenzie into the Executive Council. Baldwin was not consulted, and it is doubtful if Rolph was at first wholly acquainted with the plan. To trace in detail the tortuous course of Mackenzie's schemes during 1837 is a hopeless task; accounts differ, and Mackenzie's story, as told by Lindsay, does not fit in with the known facts. He seems to have intrigued with Papineau, and each thought the other more powerful than he himself was. Bidwell had given his opinion as to the legality of drilling, but he went no further. Rolph was less scrupulous; he hung back from countenancing the movement till Mackenzie insisted that he should be allowed to use his name when consulting the different Radical unions as to the feasibility of the scheme. Rolph believed that Mackenzie was able to rely on 4,000 supporters, as he claimed; perhaps Mackenzie believed it too, but he was grievously mistaken.

These constant drillings and suspicious movements of Mackenzie could not escape the notice of the Tories. Head refused to arrest Mackenzie or to take any

precautions until the rebels were on the march to Toronto. All the Tories were not so blinded by their recent victory, and Colonel Fitz-Gibbon, one of the veterans of 1812, despite Head, got together and drilled a small body of men. Information was brought to Head almost daily of the progress of the movement, but his contempt for the Radicals remained. It is certain that his failure to take action inclined many waverers to expect that Mackenzie would succeed, and they prepared to join him in that case. Finding Head immovable, the Tories proposed to defend themselves. At last the Governor had to consent to the arrest of Mackenzie and to the calling out of two regiments of militia. Rolph heard the news, and, knowing Fitz-Gibbon's military qualities were not despicable, he sent a message to Mackenzie. The latter had just recently sent word that the rising was to be on Thursday, December 7th; the exact message from Rolph is not known, for it passed through many hands before reaching Mackenzie. It is certain, however, that Rolph warned Mackenzie that Thursday was too late, and proposed Tuesday. When the rebellion failed, Mackenzie said that Rolph was considered sole executive, and that it was through his mismanagement that the scheme for seizing Toronto miscarried. Rolph always denied that he was more than a sympathiser, and blamed Mackenzie. The probability is that, when Rolph saw the half-armed rabble which met Mackenzie at Montgomery's Tavern, he recognised that the game was up. They numbered several hundreds, it is true, but they were only poorly armed, and food was scarce.

Mackenzie's presence at the tavern, which is a short distance from Toronto on Yonge Street, was made known by the arrival at Toronto of Mr. Brooke, who had only escaped from the insurgents by hard riding. At first Head was incredulous, but other fugitives came in, and at last even he was convinced. The loyalists armed in haste, and Fitz-Gibbon stationed a small detachment to watch Mackenzie's approach. Afterwards men asked why Rolph

did not fulfil his part of the bargain, and rouse the Radicals of Toronto. He had had a meeting with Mackenzie on the Monday, and had urged the abandonment of the enterprise, on the news of the battle of St. Charles. Mackenzie refused, and Rolph left him, seemingly intending to be governed by circumstances. It must be remembered that Rolph was as yet unsuspected, and after some delay Head pitched upon him and Baldwin to carry a flag of truce, and negotiate with the insurgents, refusing the characteristic suggestion of Fitz-Gibbon that he should be allowed to attack at once.

The appearance of Rolph as a Government envoy surprised and alarmed the rebels. As the event proved, when he was compelled to choose between betraying Head and abandoning Mackenzie, he chose the former, but the insurgents, who were about to march on Toronto, could not know this. As to what happened, we are again at a loss, for the accounts do not tally. Rolph and Baldwin went twice to meet the insurgents, and on one of the occasions Rolph managed, unknown to Baldwin, to convey to Lount or Mackenzie a hint to disregard any proposal for an armistice. Then Rolph seems to have recognised that he personally was running no small risk. The loyalists were well armed at Toronto, and a rising within the city was hopeless. The insurgents, however, expected Rolph would assist them, and proceeded towards Toronto about 6 p.m. They stumbled on the picket set by Fitz-Gibbon, and after a discharge of musketry both sides turned and fled. On the Tuesday, Sir Allan MacNab, Speaker of the Assembly, led to Toronto the first detachment of the "men of Gore," and at the same time the rebel forces began to melt away. Mackenzie was no general, and spent his time robbing the mails and burning the houses of his personal enemies. He disgusted his own men, and few hoped for success now. On the Wednesday, Dr. Morrison was arrested at Toronto. He was one of the leading Radicals and was implicated in the same way as

Rolph. The latter saw his turn would soon come, and he quietly abandoned the city and his friends, reaching the United States after several narrow escapes. He had betrayed Head, and now he abandoned Mackenzie.

On the Thursday, Fitz-Gibbon and MacNab led out the loyalists against Mackenzie. The insurgent leaders were already at loggerheads as to how they should act, and no effective resistance was possible against the 1,200 volunteers and militia. Only one man was killed, and in twenty minutes the insurgents were flying for their lives all over the country. Mackenzie escaped, but Lount and Matthews were less fortunate. The insurgents under Duncombe made even less resistance, and soon the prisons were crowded with reformers, for Mackenzie, with a criminal carelessness nothing can excuse, had allowed his list of the insurgents to fall into Head's hands. Volunteers poured into Toronto so rapidly that Head had to issue a proclamation against it. The loyalist feeling was so strong that much injustice was done. As in Lower Canada, men used the opportunity to gratify private feelings, and neither Head nor Sir Charles Arthur, his successor, was magnanimous enough to interfere.

Mackenzie made his way to the United States, and there began the saddest part of his career. He quite lost all control of his words, and stirred up the floating population in the frontier cities against Great Britain. Under frivolous pretexts he and his sympathisers got possession of arms and ammunition and on December 13th seized Navy Island, not far from the Falls of Niagara on the Canadian side of the line. Work was scarce in the frontier cities, not only on account of the season, but also because of the financial distress in the United States, and Mackenzie's offer of gold and fertile lands in Canada soon rallied a miscellaneous crowd to the standard of the provisional Government which Mackenzie proclaimed. He himself seems to have been "Lord High Everything," although he was lavish in his use of names; when he did not

actually use a name, as in Rolph's case, he allowed it to be understood that "certain other important persons" would join him in due course. However, the revolution hung fire; there was no sign of a rising in Upper Canada, for those who would have welcomed Mackenzie's success were by no means eager to risk anything for so hopeless a cause. Buffalo was Mackenzie's headquarters, and he enlisted the support of a young man, Van Rensselaer, an unworthy son of a noble father, and a certain Sutherland, an American citizen with ambitions far outrunning his abilities. Mackenzie was gradually being ousted from the position of leader; Rolph would have nothing to do with him when he published a highly-coloured "Narrative"¹ of the abortive attack on Toronto, which belittled every reformer except Mackenzie and blamed others for the miscarriage of the enterprise, and Bidwell was frightened by Head into retirement. Robert Baldwin and his friends washed their hands of the whole enterprise, and Mackenzie's chief supporters were adventurers who wished to repeat in Canada the seizure of Texas.

Head was not idle now that the storm had really burst upon him. Secure in the loyalty of Upper Canada, he sent all the militia he could spare to the help of Colborne in the lower province, and stationed a body of militia under MacNab at the village of Chippewa, opposite Navy Island. No attack was made for some time, for Mackenzie's strength was unknown, and Head did not share the desire of the Orangemen of Upper Canada for a war with the United States. MacNab was not so pacific; many of his men had been hurt by the fire from Navy Island, and when Mackenzie managed to procure an American steamer named the *Caroline* to provision Navy Island from the American shore, he could restrain himself no longer. On December 28th the *Caroline* lay at Fort Schlosser on the American side, and in obedience to MacNab's orders

¹ Parts of this curious document were reprinted in *The Spectator* of March 31st, 1838.

Commander Drew with a force of volunteers cut her out and towed her half way across the stream. At the time of her capture there were many people sleeping on board, as lodgings were difficult to find in the neighbourhood. Mackenzie, to win sympathy, issued his "Caroline Almanack" with startling woodcuts and letterpress; the story was that after killing all who resisted, the vessel was set on fire by the Canadians and sent hurtling over the Falls with men on board. The true version is that it was found impossible to carry the prize across the stream; therefore it was set on fire, and the boiler, which exploded, could be seen years afterwards in the river. Only parts of the vessel went over the Falls, and the vessel had been carefully searched for possible stowaways before it was set on fire. The real facts were not known then and a wave of sympathy set in for Mackenzie which caused great anxiety to the British Government. MacNab was knighted for his act, but apologies were tendered at Washington for the violation of United States territory. Volunteers now came in apace to Mackenzie and he thought of taking the aggressive.

In the meantime the parliament of Upper Canada was summoned, and after a characteristic speech from Head, it passed a Bill suspending the Habeas Corpus Act, and another for the trial by Courts-Martial of foreigners taken in arms. Mackenzie was becoming a nuisance, but he anticipated the storming of his fortress by decamping in the night of January 14th. When he landed on the American shore he and Van Rensselaer were arrested; friends bailed them out, and they began a new enterprise. One section of the Patriots, as they called themselves, proposed to attack the extreme western portions of Upper Canada, especially Amherstburg, a second chose Kingston, and a third seized Point Pelé Island in Lake Erie. All the attacks failed; the leaders could not agree among themselves and were beaten in detail. Many prisoners were taken armed with muskets belonging to the United States Government.

Sutherland, who was captured, professed that this attempted seizure of Canada was encouraged by the United States authorities. However, by the end of February most of the attacks had been delivered, and the Governor and Legislature of Upper Canada, proud of their victory, were not chary of their censure on the Americans for their frequent breaches of the neutrality laws. The President and the State Governors had put out various proclamations, but these had no effect on the population of the frontier cities.

The Legislative Council of Upper Canada was strongly loyalist, and the Assembly scarcely less so. Before the session closed on March 6th, each House voted a loyal address to the Queen, and Reports on the state of the province were produced by the committees of each House which had been appointed for that purpose. The sentiments in these Reports were politely but firmly expressed. All the troubles were laid at the door of the Imperial Government, which had tampered with the old and approved system of colonial government. The Report from the Assembly is a remarkable document. It recommended nothing less than a federation of British North America on the model of the later Dominion, and requested that the Queen would incorporate in her royal title a distinct claim to these possessions. The Report also proposed that the Governors in future should be men of high rank and bear the title of "Viceroy." Nothing but the intense desire of the British of Lower Canada would ever reconcile Upper Canada to a union of the two provinces; a better plan would be the annexation of Montreal, which would give Upper Canada her rights—a port communicating with the ocean. They refer to Hume, Roebuck, Leader, and Molesworth as being of the same class as Mackenzie, Rolph, and Duncombe, both in morals and politics. However, like Roebuck, the Assembly had its pet scheme for the better government of British North America. Two representatives from Upper Canada, Lower Canada, Nova Scotia, and New Brunswick, and

one each from Prince Edward Island and Newfoundland, were to have seats in the Imperial Parliament; these representatives were to be elected by the two Houses "in joint assembly," and were to continue for six months after the dissolution of the Assembly of the colony for which they were retained. A vigorous attack on the inefficiency of the Colonial Office followed, and the Assembly asserted at once its loyalty to the British connection and its detestation of American ideas of government. Sir Francis Head's administration came in for high praise.

This was the last parliament Head met, and in a farewell speech he attacked the Americans at great length and eulogised the patriotism of the people of Upper Canada. On March 23rd he handed over the government to Sir George Arthur, who had been Governor of the convict settlement of Van Diemen's Land. It has already been stated that Head had come into collision with Glenelg on the question of appointing Bidwell to a judgeship. The friction had begun earlier and increased with each dispatch, and although Head professed himself quite willing to resign if his policy was disapproved of, Glenelg knew that he could not easily get a successor for him. As Head had also had disputes on other matters, Glenelg was weary of him and his extraordinary communications. The Governor meant to form a party for himself in Upper Canada; he succeeded, and at the same time won the hatred of the reformers. A certain Ridout had been dismissed from his post as district judge of Niagara, and from his colonelcy in the militia on account of language grossly disrespectful towards the Governor. He was bitter against Head, who, in his account of the affair to the Colonial Office, said Ridout was an orator of and a frequent visitor at a certain revolutionary society's meetings. Ridout appealed to Glenelg, and as he had no difficulty in proving that he was not a *member* of the society in question, Head was ordered to reinstate him. He refused, and by sheer force of will prevailed upon the weak Glenelg to make Ridout's

reinstatement depend upon his ability to refute the various charges which were brought against him. Head knew he could not do that, and it is only fair to add that Sir George Arthur, after a careful investigation, refused to recommend Ridout's restoration to office.

The discussion on Ridout's case had lasted from 1835, and there was further trouble over the appointment of Hagerman, the Solicitor-General, to the post of Attorney-General. Hagerman, never careful in his language, had incurred Glenelg's dislike by expressions derogatory to the Presbyterian Church, and he vetoed the appointment. The quarrel over Bidwell was the last straw. It opposed Glenelg's favourite scheme of conciliation, and probably Bidwell, already disgusted with Mackenzie, would never have given even the moderate encouragement he did to his schemes had his undoubted talents been recognised. Sir Francis had always professed himself willing to resign, and Glenelg took him at his word. However, the outbreak of the rebellion about this time rendered it necessary for him to remain. On January 15th Head informed the Assembly of his resignation, as he had had the misfortune to differ from Her Majesty's Government on one or two points of colonial policy. The Legislature vigorously championed Head and asked for copies of his correspondence with the Colonial Office. Wishing to render Arthur's task as easy as possible, Head excused himself from agreeing to their wishes. Soon after the end of the session Head left for England; he will be mentioned again, and it is best to deal with Lord Durham's view of him in discussing the Report. The people of Upper Canada had grown to look on Head either with enthusiasm or tolerance. He claimed to have saved the country; he may best be compared to the British of Montreal who forced on at their pleasure the trouble which was inevitable at a later date and under more unfavourable conditions. One thing deserves to be mentioned to his credit. While the banks in Lower Canada and the United States were

suspending payment in the financial crash of 1837, Head insisted on the banks of Upper Canada redeeming their notes in specie, and the Assembly agreed. Head's successor, Sir George Arthur—"Van Demon" Arthur, the reformers called him—was a man as inferior to Head in ability as he was his superior in vigour and cruelty. He saw at a glance that rightly or wrongly the Tories were in power, and to keep the province he let them work their will. Head had instituted a board of commissioners under the Vice-Chancellor of the province to investigate the cases of the numerous prisoners and to classify them according to their guilt. Some of the accused were let out on bail, others dismissed, and a third party, mostly foreigners, were banished; the most guilty were placed on their trial, and sentenced to penal settlements such as that from which the new Governor had come. Two men, Lount and Matthews, were hanged on April 12th, despite numerous signed petitions for release. A reign of terror would have set in for the reformers of Upper Canada but for the timely arrival of the new Governor-General.

CHAPTER X.

LORD DURHAM IN CANADA. THE ORDINANCE.

LORD DURHAM had not made a very rapid voyage, for he did not arrive off the mouth of the St. Lawrence till nearly a month after leaving England. His vessel even then was delayed by ice floes, and although he reached Quebec on May 27th, he did not land till the 28th. His first appearance in Canada was splendid, and impressed—as it was meant to do—all who saw it. In a splendid uniform, and mounted on a white charger, Durham rode through lines of troops and cheering crowds to the Castle of St. Lewis. On the same day appeared his first proclamation¹ to the people of Canada announcing that he had assumed office under the Act lately passed, and outlining the principles upon which his administration was to be based. “The honest and conscientious advocates of reform and of the amelioration of defective institutions will receive from me, without distinction of party, race, or politics, that assistance and encouragement which their patriotism has a right to command from all who desire to strengthen and consolidate the connection between the parent State and these important colonies; but the disturbers of the public peace, the violators of the law, the enemies of the Crown and of the British Empire, will find in me an uncompromising opponent, determined to put in force against them all the powers, civil and military, with which I have been invested. . . . On you, the people of British America—on your conduct and on

¹ According to Miss Martineau, Book V., Chap. XII., this proclamation was prepared on board the *Hastings* in consequence of the bad news found in the Quebec newspapers which he received at the mouth of the St. Lawrence. The information is obviously from the Buller MS.

the extent of your co-operation with me—will mainly depend whether that event (the restoration of constitutional government) shall be delayed or immediate. I therefore invite from you the most free and unreserved communications. I beg you to consider me as a friend and arbitrator, ready at all times to listen to your wishes, complaints and grievances, and fully determined to act with the strictest impartiality. If you on your side will abjure all party and sectarian animosities, and unite with me in the blessed work of peace and harmony, I feel assured that I can lay the foundations of such a system of government as will protect the rights and interests of all classes, allay all dissensions, and permanently establish under Divine Providence that wealth, greatness and prosperity of which such inexhaustible elements are to be found in these fertile countries.”

Durham's first appeal to the colonists was well received. *L'Ami du Peuple*, a French journal published at Montreal, was delighted with Lord Durham; he was the last olive-branch from England, and his past ought to encourage them to support him. The Montreal British Press was not quite so enthusiastic, and *The Herald*¹ was for some weeks especially critical. At Quebec Durham was more popular. *Le Canadien* was delighted at the request for petitions—for so it interpreted Lord Durham's proclamation—as it seemed to support all they had learnt about the new Governor from their English friends. *The Gazette*, edited by Neilson, and *The Mercury* were guardedly friendly to Durham. It was part of the latter's policy to watch the newspapers carefully, and as yet there was nothing to mar the favourable character of his reception. The Patriots outside Canada, however, were not so peaceful, for on the night of the 29th Bill Johnson, the American leader of a gang of fifty non-Canadian Patriots, who lurked among the

¹ Adam Thom, who had been its editor, had nominally retired to become Recorder of Rupertsland, but he still directed its policy. He will be frequently mentioned as a “Gallophobe.”

"Thousand Isles," burnt the *Sir Robert Peel*, a Canadian steamer which had put in for wood near French Creek on the American side; the captain of the steamer was a loyalist, and as a result of his past conduct his passengers were put on shore destitute and almost naked. Other attacks were threatened, and, disgusted at the supineness of the American State authorities, Durham sent his brother-in-law, Colonel Grey, to Washington, to support Fox, the British minister. Soon a combined British and American force were in the Lake of a Thousand Isles hunting for Johnson, who had publicly avowed his action. Johnson had a narrow escape, but Mackenzie was less fortunate, for the American authorities began to let him know that the agitation must cease, and finally imprisoned him.

Durham had no very definite scheme of reform, for he honestly wished to act according to the wishes of the Canadians. However, remembering his conversation with Roebuck, he allowed one of his suite to write an article for a number of *Le Canadien* (June 8th) which attacked the idea of a union of the two provinces. The article was taken to embody Lord Durham's own views, and as Buller and Wakefield never concealed their sympathy with the French, the latter began to look forward to a favourable reception for their wishes. It was understood that Durham had come out vested with the most ample powers of redress, and petitions and addresses poured in upon him. He and his assistants carefully considered the former, and the latter always received a polite reply, but one which told them little of the real intentions of the new ruler. Durham wisely decided to form his own opinion by personal investigation or from the reports of those whom he could trust. The only decisive step he took was to isolate himself from all persons connected with the old system of government. To such an extent did he carry this aloofness that he was barely civil to a deputation of judges, and the incident excited adverse comment in *The Montreal Herald*.

Durham's relations with Colborne were not marked by excessive cordiality at first. The latter, now that his task was done and the presence of 12,000 British troops in Canada rendered a rising futile, wished to retire to England. Rumours of active disagreement between him and Durham reached England, but Colborne loyally backed up his successor, and they parted on good terms. Colborne on April 18th had nominated a special Council of twenty-one members, of whom eleven were French Canadians and two more natives of the province. Among these were John Neilson and Quesnel, but they were informed that their appointment was only provisional. Colborne was attempting to carry out the Suspending Act in the best way, and followed carefully the instructions sent by Glenelg as to the Council's meetings and composition. It had really little to do except to pass Colborne's ordinances, and fortunately proved docile. The military governed Lower Canada, which was portioned out into special districts. The Council agreed to the suspension of the Habeas Corpus and to a Press Law, and to continue a local Act which was expiring, empowering the Government to transport offenders to England and thence to *Van Diemen's Land*; another remarkable ordinance allowed the person administering the government, before the arraignment of the prisoner to grant a pardon upon such terms as should seem proper; the pardon was to have the effect of an attainder so far as regarded the forfeiture of the real and personal estate of the person mentioned therein. If a person thus pardoned broke his promise and returned from voluntary banishment or transportation without lawful excuse, he should be deemed guilty of felony and suffer death accordingly. Moreover, if a person after indictment by a grand jury did not appear within three months of the proclamation of the finding of the jury, he was judged to stand convicted, and only when he could prove within the three following months that he was unavoidably absent could he obtain a trial. These ordinances are important in view of Durham's action

in the case of Nelson and his fellow-prisoners. When peace had been re-established Colborne had no wish to act despotically. He repealed his proclamation of martial law on April 27th, and on May 5th the special Council was prorogued.

Perhaps the very docility of the Council was one of Durham's reasons for dissolving it; composed as it was of many French Canadian placemen, it could not have the confidence of the Liberals. About the same time Durham sent a circular to the members of the Executive Council thanking them for their services, and explaining that he considered it "essential for the object of this mission that during the temporary suspension of the Constitution the administration of affairs should be completely independent of and unconnected with all parties and persons in the province."¹ This dismissal of the Executive Council, which took place on May 31st, was followed by the nomination of a new one composed of Charles Buller, Thomas Turton, whom Durham had made a secretary; Colonel Couper, who was military secretary; the provincial secretary, Dominick Daly; and the commissary-general. Durham's action was tacitly approved by all in Canada, and he proceeded to devote his attention to the case of the rebels and suspects, of whom the various gaols were full to overflowing.

Durham's own opinion was probably that of Buller,² who thought that a complete amnesty was desirable. Molesworth³ had been even more emphatic, but Glenelg's instructions stood in the way. Writing to Durham on April 21st, he advised leniency, but proposed that those guilty of murder, and the more important leaders, should be exceptions to the complete amnesty; for the former, hanging was the only fate; the fate of the latter had to be

¹ The clerk of the Council made an "audacious attempt" to surprise Durham into swearing in the old members, who thought their office was for life.—Miss Martineau, Book V., Chap. XII.

² "Hansard," Vol. XL., p. 159.

³ *Ibid.*, p. 358.

settled by Durham, whose powers were supposed to be ample for the task. With his customary perverseness Glenelg proceeded to inform Durham that the ministry wished the prisoners to be tried by the ordinary criminal courts, although the penalty of death was not to be inflicted except on the murderers. The Jury Law of Lower Canada was unsettled¹; it had formerly been the custom to select the juries from the chief places of each district. As this gave a rather unfair predominance to the British, an order by Sir James Kempt extended the radius of selection to fifteen miles around, and this was further increased by Mr. Vigers' Jury Law to the whole district. As a natural result the juries were often wholly or largely French, and the Council refused to renew the Act in 1836. This caused the Government to issue private instructions to the Sheriff to follow Sir James Kempt's plan, but juries were frequently packed—the case of the Montreal riot has been already alluded to—and the French fully expected that Durham would follow the usual custom, if he did not adopt the more unpopular one of trial by Courts-Martial. He might have erected a special tribunal, but in the present state of Lower Canada an acquittal or a judicial murder were the only alternatives. Moreover he knew that his action would be looked upon with suspicion at Montreal in any case; he dared not acquit the prisoners whom, the *Herald* had declared, "the Government were fattening for the gallows," and he was conscious of the value clemency would have if he could render it acceptable to all parties.

Durham's first action was to request the Attorney-General to furnish him with a list of the prisoners and their offences. The gaol at Montreal was full, and everywhere there was misery and uncertainty as to the future. The story of Durham's next proceedings is largely a matter of conjecture. The probable course of events was as follows: Wakefield started for Canada about a week after Durham

¹ Report, pp. 88 *et seq.*

had sailed. In the ordinary way he would travel by New York to Montreal. Here he probably visited Roebuck's step-father, Colonel John Simpson, then a Customs collector at Coteau du Lac, who, like Roebuck, had sympathised with Papineau. Lord Durham's order to the Attorney-General would by this time be known, and nothing is more likely than that Wakefield and Simpson should talk over matters.¹ Whether Wakefield took any definite offer to Quebec is unknown, but on June 19th Buller and Edward Ellice visited Montreal. Buller's object was probably to see how far *The Montreal Herald* truly represented the British, and to arrange for the organization of a body of police there by Leclerc,² whom Durham found a useful ally. There can be no doubt that he also called upon Simpson, and assured him that his mediation was welcome. Theller³ says that Simpson was acting under Durham's orders, and although this may be not strictly true, Nelson and his friends were glad to believe it.

The principal prisoners confined at Montreal were Dr. Wolfred Nelson, of St. Denis, R. S. M. Bouchette, R. des Rivieres, L. H. Masson, H. A. Gauvin, S. Marchesand, T. H. Goddu, and B. Viger. Simpson had no difficulty in persuading these men to take advantage of the ordinance passed by Colborne; Durham's pacific desires were known, and it was hoped by Nelson and his friends that the Governor would be satisfied with a voluntary exile on their part. They were all disgusted with Papineau and did not expect that their punishment would endure longer than the suspension of the Constitution. It was tacitly agreed that they should be the only victims. The letter they signed is of doubtful authorship;

¹ Two members of the Council suggested the punishment of a few leading rebels, lightly but steadily, by means of an *ex post facto* law. Foreseeing the possible objection to this, Durham desired first the consent of the British and the prisoners.—Miss Martineau, Book V., Chap. XII.

² Report, p. 93.

³ "Canada in 1837-38," Vol. II., p. 79; and *cf.* Dispatch of June 29th.

certainly, it was not, as Theller hints, known beforehand to Durham. "They could trust Lord Durham for his own character, and had he come sooner there would have been no rebellion. They did not rebel against Her Majesty's person or Government, but against colonial misgovernment. . . . They desired to avoid all the ceremonies of a trial, and knowing that Lord Durham's power was unlimited," they added, "if there be guilt in high aspirations we confess our guilt and plead guilty." It seems to have been this paper that Wakefield took to Quebec, but it was not considered complete enough, as by Colborne's ordinance the prisoners must first confess their guilt.

Quoting Theller¹ again, Buller brought with him from Quebec a paper which they were requested to sign. Simpson took it to them on June 23rd, but all his eloquence was thrown away; they were unwilling to record an unqualified plea of guilty of high treason, although they would agree to anything else, if by so doing they could secure the release of their fellows. They were allowed to consult with a friend. (Could it have been Lafontaine?) He and Simpson jointly concocted a letter which professed only to explain the ambiguities of their former appeal, dated June 18th. After some demur the prisoners signed it on June 26th. It ran:—

"My lord, we have some reason to apprehend that the expressions used by us in a letter addressed to your lordship on the 18th instant may appear vague and ambiguous. Our intention, my lord, was distinctly to avow that in pursuit of objects dear to the great mass of our population, we took a part that has eventuated in a charge of high treason. We professed our willingness to plead guilty, whereby to avoid the necessity of a trial; and thus to give, as far as in our power, tranquillity to the country; but whilst we were thus disposed to contribute to the happiness of others we could not condescend to shield ourselves under the provisions of

¹ Cf. also Carrier: "Les Événements de 1837-38," p. 106.

an ordinance passed by the late special Council of the province.

“Permit us then, my lord, to perform this great duty, to mark our entire confidence in your lordship, and to place ourselves at your disposal without availing ourselves of provisions which would degrade us in our own eyes by marking an unworthy distrust on both sides.

“With this short explanation of our feelings, we again place ourselves at your lordship’s discretion, and pray that the peace of the country may not be endangered by a trial.

“We have the honour to be, my lord, with unfeigned respect, your lordship’s most humble servants, R. S. M. BOUCHETTE, WOLFRED NELSON,” and the rest.

Lord Durham accepted this, and on June 28th he nominated his special Council, which, according to the Act, was to ratify all his ordinances. Five members were to constitute a quorum, and Durham cleverly interpreted this to mean that five members were sufficient for a first nomination. He was not sure, after some of the speeches made during the discussion in parliament, whether he had any right to call a Council at all, and he seems merely to have wished to give the ministry a pretext for defending his action. It would have been better had he acted on the suggestion thrown out in the letter, and of his own personal authority sentenced them to honourable exile, preferably to England. As it was, he disregarded their wishes, and, seizing on the qualified plea of guilty they entered, he thought it safer to have them kept in safe custody near at hand. The special Council which carried through the famous ordinance consisted of Charles Buller, chief secretary, Vice-Admiral Sir Charles Paget, Major-General Sir James Macdonnell, commanding the Guards, Colonel Couper, military secretary and chief aide-de-camp, and Colonel Grey, the envoy to Washington, and Durham’s brother-in-law.

There was no pretence at debate, nor was it meant that

there should be ; the Act conferring on Durham his powers clearly had in view nothing but a body which should register the Governor's acts, and on the very day of their appointment the ordinance appeared. By it three classes of prisoners were distinguished. Wolfred Nelson and the seven others referred to above as signing the letter were banished to Bermuda, after having admitted their guilt, and submitted themselves to Her Majesty's pleasure ; Papineau and fifteen others who had absconded formed the second class, and the murderers of Weir and Chartrand the third. Reciting that the Queen wished to grant an amnesty to the rest of the prisoners, but that it was deemed expedient for the peace of the province to take severer measures against the leaders, it ordered that Nelson and his fellow-prisoners should be confined under such restraints as were deemed fitting at Bermuda, and that if any member, either of the party of fugitives or of the exiles, should be found at large in the province he should be deemed guilty of treason, and on being convicted of having returned should suffer death. The Governor for the time being, however, was to have power to allow all or any of these persons to return and reside in the province. The murderers of Weir and Chartrand were expressly excluded from the benefits of this ordinance.

Nelson and his friends were in a peculiar position. In a way they felt grateful to Durham for his clemency, but the feeling grew that they had been tricked. However, when visited by the Attorney-General at their request, they asked him to express their thanks to the Governor for his clemency ; they were quite willing to go into exile if it would restore peace to Canada. All the prisoners were by this time disgusted with Papineau's incapacity, not to mention his cowardice, for they said that he had procured his own escape by telling his deluded followers that he was going to place himself at the head of 12,000 men in the United States.¹ On July 3rd Nelson and the others

¹ Cf. Report, p. 39, and Duncombe, Vol. I., p. 257.

arrived at Quebec from Montreal, and were immediately put on board the *Vestal*, which sailed for Bermuda. Before they left, a meeting of the Liberal extremists was held in the St. Roch district of Quebec, and fiery Resolutions were passed and ordered to be sent on board the *Vestal*.¹ A storm was brewing, but at present all seemed calm. The English, indeed, did not receive the ordinance well in every case. *The Montreal Herald* talked about Magna Charta and the indefeasible right of trial by jury, quite forgetting that it had formerly advised that Papineau should be hanged without a trial. Neilson in *The Quebec Gazette* argued with the Montreal extremists, and pointed out the folly of attacking what was unavoidable. To Durham's delight the French papers welcomed his action warmly, and stigmatised his opponents as enemies to their country. *Le Canadien* of July 2nd praised the ordinance, and showing its readers how Lord Durham was staking his reputation on his success in Canada advised that he should be frankly accepted as a dictator. *The Vindicator* and *La Minerve* had ceased to appear at the beginning of the troubles, but their clients still lived, and Durham took too rosy a view. However, determining to win over the *Herald*, he sent Buller to Montreal, and Adam Thom, its director, soon changed his opinion of the new ruler.

While the prisoners on the *Vestal* were drinking Lord Durham's health, a dispatch to Glenelg was carrying Durham's official account of his action. On June 29th he wrote to the Colonial Secretary the defence which he was quite aware was necessary for his action. It was not the first he had sent, and private letters had also been dispatched both to Glenelg and Melbourne; these, however, will be most fitly referred to later. Now he began by pointing out that his action had received the entire approbation of Sir John Colborne, and the heads of what is called the British party, who only desired security for the future and not sanguinary punishment. He had not sent the

¹ Bonnycastle, "Canada as it Was," II., p. 141.

prisoners to a penal colony, as was in his power to do, because public opinion would not have sanctioned their branding with such infamy, and, what was more important still, he did not wish to provide Nelson with a fresh field for the exercise of his talents as a rebel leader. After a consultation with Sir Charles Paget, he fixed on surveillance in Bermuda as the most fitting punishment, because there they would be harmless and would not attempt to escape for their own sakes. Durham said in one of his later dispatches that he was quite aware that he had no authority over Bermuda, but that he expected the Island Legislature to act, or Her Majesty's Government to complete his proceedings. Durham soon heard from Sir Stephen Chapman, the Governor of Bermuda; the law officers of the Crown had informed him that he had no power to impose nor legal means to enforce any restrictions upon the prisoners, whether with a view to their detention or otherwise. Chapman at first thought of refusing to allow the prisoners to land, but contented himself with taking their parole, and requesting Durham to relieve him of their charge as soon as possible. Nelson and his associates made the best of a bad business, and their detention did not last long.

Durham, as ever, appealed to a wider audience than parliament, and very soon a letter appeared in *The Morning Chronicle* signed by Buller. It was not meant ostensibly for publication, but it went to Robertson, editor of *The Westminster Review*, one of the few organs supporting Durham; Robertson allowed Melbourne to see it, and it soon became common property when it appeared, as was intended, in the *Chronicle*. It ran as follows:—

“I enclose you our first great act about the prisoners. It will appear to you horribly unconstitutional and despotic, but it is really mild. We put no one to death. Our transportation is, as you will see, not to be penal, but merely accompanied by measures necessary for security. The rest are merely banished; we confiscate no property. We were obliged to enclose a great many in our provision, in

conformity to a general rule laid down in each case, whom we do not wish and do not intend to treat so hardly. This is rather an advantage, as it will enable us immediately to bring the pardoning power into operation. We would not interfere with the ordinary tribunals or tamper with the juries. The legal guilt of these men was clear. From an ordinary jury their certain acquittal was equally clear. These ignorant Canadians would have said either that their leaders in revolt were right all along, or that the Government had not dared to punish. The British party would have said that our trial had been a mere mockery of justice, and that we had let their guilty enemies loose on them by a trick. Our present act does something like substantial justice; it will do good to both parties, and in no way corrupt the great judicial institutions of the country. The prisoners petitioned to be disposed of without trial."

Perhaps this letter of Buller is the best defence and apology for Lord Durham's action. More will be said when the debate in the Imperial Parliament is referred to. At present it is sufficient to notice that Durham could not please any one of the three parties—the British, the French, and the prisoners—without offending the other two. None of his suite knew much about the laws of British North America, and Paget's suggestion was tempting. Durham accompanied the first ordinance with another—for the establishment of an efficient system of police in Quebec and Montreal. Gosford had employed Young at Quebec and Leclerc at Montreal to carry out some reforms in the old arrangement of watchmen, who were worse than useless. Few cities needed more efficient police than Quebec; travellers had often commented on the laxity of colonial morals, but the pleasure-loving Québecquois did not appreciate the almost New England austerity with which the new law was enforced. Colborne's Council were considering a similar ordinance, and Durham, as was so often the case, only completed the work of others. Prompt action was necessary, for disorder was rife in the lower town

and complaints of the desertion of sailors were common. Durham did not forget the other needs of the province, and it was announced that the new Council were preparing measures dealing with the question of the Jury Laws, the administration of justice, bankruptcy cases, municipal institutions, education, registry offices, and the equitable commutation of feudal tenures. On June 21st there had appeared in the Official Gazette a notice appointing Charles Buller to be chief commissioner to inquire into the present mode of disposing of Crown lands in Lower Canada, and to collect information for the encouragement of emigration. Richard Davies Hanson and H. Petrie, two of Durham's attachés, were appointed assistant-commissioners. The Lieutenant-Governors of the various provinces were requested to appoint similar commissioners, and not to make any fresh grants of land until a uniform scheme had been evolved for all British North America. Other commissions were appointed to investigate the question of education; Arthur Buller was appointed chairman and also judge of the new Court of Appeal. A third committee to consider a scheme for the establishment of municipal institutions was the one on which Adam Thom was to be employed. Wakefield, for reasons to be explained later, received no appointment, but he was employed in making a Report on the waste lands of the colony, and upon other matters.

Despite Durham's administrative duties he found time to entertain lavishly the leaders of the two parties, and also a number of American visitors, some of whose accounts are most amusing, for they could not understand but were greatly impressed by the state which the Earl kept up, and by the magnificence of Lady Durham's drawing-rooms. The Earl himself, on horseback, and often surrounded by a showy staff, rode out almost daily, accompanying his wife, who was in her carriage. The Canadians of both races realized that Durham was a man of different calibre to Gosford; they thought he was a strong man with unlimited power, and of great benevolence. He had wisely conciliated

the clergy (for which he was attacked¹ by his old enemy Bishop Philpotts), and he secured the approbation of the seigneurie of Montreal for Buller's² solution of the vexed question of the commutation of the feudal tenures. Buller knew nothing of French law, but he was an able man and proposed that the commutation money should be made an annual charge redeemable at the will of the debtor. This seemed fair, but it did not suit Ellice, who owned the large seigneurie of Beauharnois. Ellice was unpopular with his tenants, for he treated the relations between them and himself as strictly economic, and his disapproval of Buller's leniency was the beginning of his hostility to Durham. The Governor-General, thinking he had left behind a peaceful Lower Canada, began his tour to the upper province on July 4th. It is a coincidence that on July 3rd appeared the first number of *The Toronto Examiner*, in which Francis Hincks pleaded so powerfully for "responsible Government."

¹ "Hansard," Vol. XLIV., p. 483.

² Adam Thom seems to have had a hand in this scheme. Cf. *The Spectator* (1838), p. 774.

CHAPTER XI.

THE GOVERNOR-GENERAL'S TOUR.

To his annoyance Durham found it necessary to charter a private steamboat for his journey. This vessel, fitly named the *John Bull*, was altered to suit his taste, and the central cabin was transformed into a library in which he could receive deputations. Durham did not forget to write to Glenelg a strong dispatch on the necessity for a Government vessel to be placed at his disposal, on account of the cost incurred in chartering the *John Bull*. He left Quebec on July 4th, accompanied by Buller, Turton, Paget, and others of his suite : Wakefield remained behind, for he had other work to perform. Early in his voyage he experienced the results of the Assembly's refusal to improve the St. Lawrence channel ; his recommendation as to the necessity for the deepening of Lake St. Peter was the stronger because of the inconvenience its shallows caused. He arrived at Montreal on the 6th and was warmly received, perhaps rather to his surprise. He exerted himself to please, and the British were willing to be pleased. Durham could not fail to find a hearing there ; for his friend Easthope, of *The Morning Chronicle*, had close relations with many of the leading Canadian merchants in London, and Roebuck had said outright at the Crown and Anchor meeting on January 4th that McGillivray, one of them, was part proprietor of *The Morning Chronicle* ; the *Chronicle* denied this, it is true, but the fact remains that McGillivray had married a daughter of Easthope, and both were closely connected with Edward Ellice, who was again a relative of Durham. Probably McGillivray was the source of that " exclusive information " which the *Chronicle* so frequently

boasted of during the next few months. Buller had done his work well, and Adam Thom was an enthusiastic champion of Lord Durham. What the latter's plans were had not yet come out, but there were whispers that although the Governor could not yet see his way to approve of the union with Upper Canada, he was less unfavourably disposed to the scheme of Sir Charles Grey, one of Lord Gosford's commissioners. Under this scheme Lower Canada would be divided into two, or perhaps three, sections with local self-government and a common federal Legislature; Montreal, Quebec, and the Eastern Townships would be the new divisions. To the French Durham was polite, and they were grateful for the ordinance—as yet. It was always the custom for Durham and his suite to invite both nationalities together when any entertainment, public or private, was given, but although the French were willing to attend, they all—even Lafontaine—seemed disinclined to unbend. During this short stay Durham had, by his unexpected affability, created for himself a party.

The *John Bull* could not ascend the St. Lawrence beyond Montreal, and Durham travelled overland to Prescott. At that place he embarked on board the *Cobourg*, and reached Kingston late on the evening of the 11th. On his way he passed through The Thousand Isles, and next day heard that he had all but encountered "Bill" Johnson in person. Durham's reception in this part of Upper Canada was enthusiastic, and he was equally willing to please. He passed the night of the 11th of July at the British North American Hotel, for the *Cobourg* was most inconvenient. Soon stories were being told in Canada of Durham's haughtiness. His enemies, and he had many at first, revelled in telling how he had scolded an unfortunate waiter who had appeared in his shirt-sleeves, and how he had rated the mate of the *Cobourg* for daring to approach too near him. They said that he had actually refused to allow smoking in the hotel while he remained there, but that even the imperious Governor met his match at last in

the landlady. Durham had suspected the freshness of the eggs supplied for breakfast, and, when he demanded that they should be "warm from the nest," the obliging landlady dipped them in hot water before forwarding them to the Earl for inspection. But Durham's defects were purely personal, and he busied himself with plans for the development of Kingston and the Rideau Canal. By July 13th Durham reached Fort St. George, and ascended the Niagara, meeting Sir John Colborne at Queenston. Side by side they rode on horseback to the camp of the 43rd regiment at Niagara. Here they were joined by Sir George Arthur. As Durham expected, the prompt massing of troops by the Falls had impressed the Americans, and, ever ready to follow up an advantage, the Governor planned to hold a review at which the Americans should be honoured guests.

While the preparations were being made, Durham visited Navy Island, and got a distant glimpse of Buffalo and the Erie Canal. He read the local newspapers, and felt humiliated at the contrast presented by the busy harbour of Buffalo to the empty Canadian ports. Durham was perhaps too hard on Canada, and he did not realize that the foundation of the prosperity he so much envied was a credit system, impossible, even if desirable, north of the frontier. The review was a great success. Durham was an ideal host, and although he could not accept the dinner offered him at Buffalo in return for the ball he gave on the 17th, he had effectually killed American sympathy for the Patriots. On the 18th he left Niagara, after having received two addresses. Secure from attack on his flank, Durham adopted a language towards the "brigands" that secured him favour in Upper Canada, and he proceeded to Toronto hopeful of a good reception. On his way he visited Port Dalhousie, the eastern entrance of the Welland Canal. Impressed by its inferiority to the Erie Canal, and yet recognising its immense natural advantages, Durham wrote home to Glenelg, and advised that the

Imperial Government should make a grant of money towards the cost, as this would tend to restore tranquillity to Upper Canada.

Durham arrived at Toronto late in the afternoon of the 18th. The Lieutenant-Governor, the Mayor and Corporation, and in fact every inhabitant of the district who could possibly appear, turned out to meet him. He was agreeably surprised, and by his graciousness at the *levée* and at the State-dinner he captivated for a moment the hearts of the Tories. He received several addresses, and his reply to that from the Anglican clergy was most diplomatic. Strachan had qualities which would appeal to Durham, and the latter could admire the Archdeacon's real enthusiasm for education. Durham had one point in common with the Tories—he disliked the proposal to reunite the Canadas. The Tories were not at all averse to federation, and Durham must have recognised that without their support it was impossible to hold Upper Canada.

Durham left Toronto on the 19th, for he could have done no good by remaining. It was necessary for him to avoid the reformers, as such, if he would retain the new-found loyalty of the Tories. Moreover he was ill; during his four days' stay at Niagara he had suffered from dyspepsia, and Buller and Paget were too ill to travel at all. The length of Durham's wine-bill was jokingly referred to at a later date in parliament. How Buller used his time at Niagara and elsewhere in Upper Canada we are told by Head. He was a good-hearted but not very prudent Radical, and he could only see the reformers' side of the story. He knew little of Durham's reception at Toronto, and was not easily persuaded out of a view once held. Buller seems to have conceived a violent dislike against Colborne, who was very popular in Upper Canada, and to have taken as betokening serious discontent every hasty word he heard from the sorely tried farmers of the Niagara district.

Before Durham left Toronto he had taken Arthur's

measure. The latter's approval of severity was distasteful to him, despite his own threats against the "brigands." At a later date a lively quarrel broke out, when Durham gave Arthur to understand that he would sanction no fresh executions. Arthur blustered about his independence, but Durham was firm. He gained his point, but won Arthur's enmity and alienated the Tories of Upper Canada. At present, however, the danger from the "brigands" made Arthur quiescent, but when the Report was issued he used all his influence against the proposed union of the provinces. Poulett Thompson had been warned by Durham, and having none of Durham's scruples he calmly disregarded Arthur's authority, and reduced him to a cypher long before he was actually recalled.

The reformers of Upper Canada recognised that if Durham was not an advocate, he would at least be a protector, and were inclined to forgive him for fraternising with the Tories of Toronto. He was therefore quite justified in thinking that he had left behind a tranquil Upper Canada, and he landed at Kingston still optimistic. He was only on shore one hour, but as usual he managed to crowd into it answers to several addresses, and kindly remarks to the various notabilities. As yet there was no jarring note; crowds of admirers cheered him everywhere, and at his side was the leader of the Tories, Chief Justice Robinson. He reached Prescott on the 20th, after passing within one hundred yards of the wreck of the *Sir Robert Peel*; two of "Bill" Johnson's men had just been captured.

Leaving Prescott, Durham continued his journey by way of Coteau du Lac. Here the Long Sault Rapids begin, and he had to leave the *Cobourg*. At Coteau du Lac he received an address; it thanked him for the Ordinance, but begged him in passionate language to relieve them of their feudal burdens. Durham sympathised with them, and knowing it they gave him a particularly hearty welcome. At the other end of the Rapids lay the

estate of Ellice, the seigneurie of Beauharnois. Durham had promised to visit it, and descended the St. Lawrence in a *batteau* specially fitted up. The journey was novel, but it converted him into an enthusiastic supporter of the Cornwall Canal.

Durham had another splendid reception at Beauharnois ; it is perhaps significant, however, that the British and French presented separate addresses. Ellice was not a popular landlord ; he exacted the utmost possible rent, and his attempt to provide for the education of the peasantry was not accepted as a sufficient atonement. The local member seems to have embezzled the funds and ruined the scheme. Durham reached Montreal on July 24th. He was received with enthusiasm by the British, and an address was presented to him from the inhabitants of the seigneurie of Montreal, asking for the abolition of feudal tenure, and for the resumption by government of the rights of the Sulpicians. The petition was of uncertain origin, and one sentence contained a threat ; this latter called forth from Durham a severe rebuke, and no one seemed very anxious to claim the authorship of the document.

When Durham reached Montreal for the second time, his reception from the French was not quite so enthusiastic. Papineau was staying at Albany, in Vermont, and the hopes of the French were rising. The ordinance did not seem so great a boon on second thoughts, and Durham's friendliness with the Tories of Upper Canada and with the British of Montreal seemed suspicious. The country folk who attended the market talked matters over ; the extremists said that the Governor dared not punish anyone, and that the British had no troops to send out, and Papineau was about to return with his 12,000 men. Although Durham did not know it, two conspiracies were forming at his very doors. In June, before the ordinance was passed, the French plot was being hatched ; this time no English should be admitted, and all through July, August, and September the inhabitants about Quebec were administering

mutual oaths to rise when Dr. Robert Nelson, Cote, and Gagnon, who were across the frontier, should appear with the necessary arms. There was only the vaguest idea of a future action after the rebellion had been successful but Nelson favoured the formation of a French peasant Republic in Lower Canada.

The exiled Upper Canadians and their American sympathisers held aloof from the French scheme; they had other plans for Canada, and when the increased vigilance, both of Sir George Arthur and the United States Government, rendered border raids unprofitable, they formed, in May, 1838, the "Hunter Lodges." The members, who were frequently highly-placed American officials, were bound together by a sort of freemasonry with hierarchies and secret signs, and were pledged to work for the extension of Republican principles over the whole of North America. Mackenzie was held of small account now, but the Hunter leaders quarrelled, and Arthur and Colborne, who had spies everywhere, learnt each plan as it was formed. All the inhabitants on the frontier were not hostile to England, and they cared little for the Hunters' threats of vengeance. It is pointed out in the first number of *The Colonial Magazine* that this hostility of the frontier population to England had a curious origin. "Many of the inhabitants are British colonists. If they are Radicals, they hate the monarchical system; and if they are not, they have to show zeal against it to prevent themselves being suspected of treachery." The burning of the *Sir Robert Peel* was the first blow, and although Durham had persuaded the Washington authorities to enforce the Neutrality Laws, his threats of retaliation on the brigands only drove the conspiracy underground and deluded him as to his true position.

Durham had the most perfect confidence in Buller and Wakefield, and often discussed his policy with them. It was felt that the ordinance was incomplete unless Papineau would ask for pardon too. Durham was quite willing to grant it; for he felt that to carry through any scheme of

federation without the consent of the Assembly of Lower Canada would be futile. His plan was to use the power conferred on him by the ordinance to amnesty Papineau and the Bermudan exiles, and persuade them to agree to federation as the price of the restoration of the Assembly; however, they must ask, and they did not seem inclined to do so. There is no necessity to dispute Wakefield's assertion that Durham did not know of his plan,¹ but he knew of Durham's plan, and he did not know of Papineau's plan, which was to wait for something to turn up, preferably a war between England and the United States. According to Wakefield, his search for Papineau arose out of a very simple incident. Introduced by Colonel Simpson, the mediator of the ordinance scheme, he soon got on familiar terms with Lafontaine and the other French leaders. Many were the discussions on the situation, and Wakefield, out of a pure desire to help the French, tried to show them the folly of their proceedings. Whether this was meant as a hint or not, the French took it as one, and attempted to induce Wakefield to offer to mediate with Lord Durham. Wakefield knew of Lafontaine's wish that the Assembly should be called together again. He was the virtual leader of the French, and apparently made Durham a definite promise that the legislation desired by the British should be favourably considered by the new Assembly.² Lafontaine and Morin, now convinced of the folly of armed resistance, had no wish to see Papineau back in Canada. Cote, Nelson and Davignon were obscure people, and Lafontaine had no fear of them! Papineau was different, for he was the idol of the peasantry despite his flight. The views of Lafontaine were shared by Vallières de St. Réal, whom Durham, in furtherance of his plan and to win the confidence of the French, made a member of the Executive Council and a judge of the Court of Appeal. He had been the Moderate candidate

¹ *The Spectator*, November 24th, 1838.

² *Cf. Report*, p. 13.

for the Speakership against Papineau in Dalhousie's time, and had held the office during Papineau's absence in England in 1825. Leslie, an Englishman, who favoured the French Liberals, was also one of the persons with whom Wakefield consorted. According to a letter, which Roebuck quotes,¹ Wakefield went so far as to ask these men for information about all the exiles; but other French politicians were not so wary as Lafontaine. Among the exiles with Papineau was a young man named Dr. Davignon; his friends were very anxious for his return, and encouraged by them, Wakefield contented himself with a letter from Simpson alone. He did not know the precise whereabouts of Papineau, but made his way to Saratoga. Papineau was not there, and Wakefield could only see Dr. Davignon and Cartier, the former at Saratoga, the latter at Burlington.² Wakefield admits that he "conversed fully and frankly on Canadian affairs" while in the United States. According to Garneau, the conversation took the form of an assurance that Buller and Turton were great friends of the French. Wakefield left Simpson's letter with an American named Cowan, with the message that he would call upon the French leader at his pleasure. Papineau did not take the bait; perhaps one explanation was his constitutional timidity. He was at Albany on June 6th, and wrote a letter to Roebuck, giving him a full account of Lord Durham's proceedings, including the dismissal of the Councils. Roebuck was delighted that Durham had, as he thought, taken his advice, but he was less pleased with a suggestion of Papineau that he should come to Europe.³ He wished Papineau to have a hearing, and yet he feared the French leader might say too much; perhaps Papineau's wish to leave America was due to the knowledge of Colonel Grey's mission to Washington. He knew that Durham had asked for affidavits against the prisoners

¹ *The Spectator*, November 10th, 1838.

² Garneau: "History of Canada," Vol. II., p. 468.

³ Leader: "Roebuck," p. 121.

and under Colborne's ordinance he might be called upon to surrender himself within three months, or, what was worse, might be arrested by the United States authorities. Whatever the cause of his hesitation was, he refused to enter into communication with Wakefield or to sue for pardon. He was in the natural course of events shouldered out of the way by men of action like Nelson, and soon afterwards made his way to Paris.

Wakefield returned to Canada. As he declined to give any alternative version, while denying that of Roebuck and Dr. Davignon's brother, it seems impossible to believe that he was speaking the whole truth. Gisburne, the biographer of New Zealand statesmen, said of Wakefield: "His deceptiveness was ineradicable, and like the fowler, he was ever spreading his nets; always plausible, and often persuasive, he was never simple and straightforward." His conduct in Canada, especially at this juncture, well deserves the epithet of "crooked." Garneau is, perhaps, not an absolutely unbiassed author, but his version equally contradicts Wakefield's. We may take it, then, that on his return he communicated the news of his failure to Buller. He had interviews with Lafontaine in Buller's presence, and the question as to the recall of the exiles came up. Wakefield maintained that the exile was unjust, and that the sooner a return was allowed the better. Buller advised that the exiles should petition Lord Durham, but Wakefield, playing the game, said that the Government ought voluntarily to undo their act of injustice. Buller, as though partly converted, asked Lafontaine how the recall could be managed. The advocate referred him to the clause in the ordinance allowing the Governor to grant a pardon under his sign and seal.¹ Buller's reply led Lafontaine to think that the recall would be merely a matter of time, but nothing was done, and Lafontaine had a personal grievance against the new system.

When Gosford refused Lafontaine's request that he should

¹ *The Spectator*, November 10th, 1838, p. 1062.

summon an Assembly, on the news of the outbreak on the Richelieu, the latter considered that Montreal would not be a desirable place of residence for him. He therefore went to England, where he was well received by the Radicals, and did not return to Canada till the spring. In his absence his wife had been stopped by the military at Three Rivers, on her way home from Quebec, and her trunks searched for possible treasonable documents. Of course none were found, for Lafontaine was too wary; but in his desk at Montreal, Leclerc and Donegani, two loyalist magistrates, discovered five letters written to him by clients. These were considered sufficient basis for a warrant on a charge of high treason. Lafontaine heard of this, and before arriving at Montreal he wrote to De Lacy, one of the Executive Councillors, asking if the news were true; if so, he was on his way to be tried, and he only asked the question because the suspension of the Habeas Corpus rendered it necessary. De Lacy promised to inform Durham, but nothing was done. It was this charge of high treason, which he was not allowed to refute, that caused Lafontaine to sulk when his assistance would have been most valuable to Durham. At last, in September, he wrote to Buller, who had discussed the matter with him, and was angry when Buller calmly told him that neither a trial nor a copy of the warrant could be allowed him. By means of a barrister named Drummond, Lafontaine learned that the warrant had been based on a letter found somewhere by Leclerc, and which he was said to have written to a M. Girouard. The letter was of doubtful authenticity. Leclerc now said that he looked upon the letter as a joke (*badinage*), but in September, 1838, Lafontaine sent the whole correspondence to *Le Temps*. Coming so closely on the news of the disallowance of the ordinance, it shook the confidence of the French in Durham. As fast as Durham devised a scheme of conciliation his subordinates caused it to miscarry by sheer bad management, and Durham himself, ever lacking in tact, gave his

confidence to those French Canadians, such as Leclerc, who were most unpopular with their countrymen.

It is necessary to go back a little now. Soon after his arrival in Canada Lord Durham had a most interesting visitor. Major John Richardson had fought in De Lacy Evans' British Legion against the Carlists, and had written a number of entertaining books. The proprietors of *The Times* conceived the idea of sending him out as special correspondent. He was to play the spy on Durham—of course it was not expressed in such vulgar terms—and to criticise in as hostile a spirit as possible all Durham's acts. Richardson was well paid for his work, but his employers reckoned without Durham. The Governor quite expected his visitor, and received him with that charming courtesy which he knew so well how to assume. By skilful flattery Durham convinced Richardson of anything he desired, and soon *The Times* correspondent was sending home articles in most enthusiastic praise of the Governor-General's policy. Durham affected to confide all his plans to so able an advocate, and Buller was equally friendly. Richardson was delighted at his good fortune, but *The Times* proprietors were not. The waste-paper basket proved the receptacle of the Major's account of how the Governor proposed to remedy the racial question by a scheme of a British North-American federation, which would bridle the French without crippling them. Letters took from three to four weeks to travel from Montreal to London, and it was not till October 14th that Richardson received the news of his dismissal by *The Times*. In the meantime he had been eating Lord Durham's dinners, and *The Times* was deprived of the special information which it meant to use against the Lord High Commissioner.

CHAPTER XII.

DISILLUSIONMENT.

ON August 9th Durham sent home what was perhaps the most famous of his dispatches. It was marked "Secret," and was only published in a mutilated form. It gives Lord Durham's opinion of the policy pursued by the Imperial Government since the conquest, and condemns the Act of 1791 for its acknowledgment of the French character of Lower Canada. The language is typical of Durham's masterful manner. He admits that Papineau's policy was theoretically justifiable under the Constitutional Act, but bound to bring on a conflict with the British sooner or later, and that the conduct of the latter had only precipitated matters. "The consequent rebellion, although precipitated by the British from an instinctive sense of the danger of allowing the Canadians full time for preparation, could not, perhaps, have been avoided; and the sentiment of national hostility has been aggravated to the uttermost on both sides by that excessive inflammation of the passions which always attends upon bloodshed for such a cause, and still more by this unusual circumstance, that the victor minority suffered extreme fear at the beginning of the contest, and that the now subdued majority had been led to hope everything from an appeal to force."

Such was Durham's view of the past, and the more carefully the facts are studied the more is it found to be true. He was not equally happy in his opinion of the future. Perhaps he wrote while the disappointment at Wakefield's failure was still fresh. Durham tried to understand and sympathise with the French, but he never succeeded in seeing their point of view; he had, in fact, a constitutional

incapacity for seeing any point of view but his own, and to this must be ascribed largely his failure in Canada. He was able, however, to write more profitably on the chances of American intervention. Slingsby Duncombe, the Radical member for Finsbury, kept a diary of his visit to Durham, and we are told of numerous parties given by Durham at which American guests were nearly always present. They were charmed by the Earl's hospitality, and carried his praises home, but it is possible that they too frequently merely spoke smooth things to him. The United States Government were not likely to intervene in Canada in the existing state of their financial stability, but they had no control over the lawless frontier population. We shall not be far wrong in conjecturing that the suppressed passages in the dispatch refer to the wholesale violation of the neutrality laws in favour of the Hunter Lodges by highly-placed American officials. Colborne, however, never relaxed his vigilance, for at the end of June¹ there had been a raid on Upper Canada at the mouth of the Thames; State prisoners were rescued in the London district in July, and, finally, a camp had to be formed at Niagara to check further movements.

In an excursion to Upper Canada Duncombe met poor half-mad Robert Gourlay, who, as has been already mentioned, was compelled to quit that province. Since then Gourlay had had an eventful history; he had tried, but in vain, to get some recompense from the British Government. Once, in 1824, he had been sentenced to three years' imprisonment in the Coldbath Fields Prison for horsewhipping Lord Brougham. He was now on his way from Quebec after a series of vain attempts to interview Lord Durham personally. Gourlay's opinions were still the same, but he at least was no rebel, and resisted for many years the proposal of Mackenzie for a combined demonstration against the party in power at Toronto. Gourlay finally sent Mackenzie a letter which would have

¹ Bonnycastle: "Canada as it Was," Vol. II., p. 141.

done credit for vituperation even to that master of language, and when Mackenzie finally rose in revolt Gourlay took a delight in baulking all his schemes by sending information to Head. He became quite friendly with the Lieutenant-Governor, who invited him to return. Gourlay, however, though very poor, thought he could serve his country better by remaining across the frontier. When Head left, Gourlay continued to send information to Arthur, but met with no response, for the party in power had no wish to see Gourlay back.¹ When Durham came Gourlay hoped for redress from him, and sent a series of letters to him, during June and July, from various places. He attempted but vainly to see Durham at Niagara, and it was not until August 10th that he secured an interview with Colonel Couper, the military secretary, at Montreal. He handed him certain papers for Lord Durham's perusal, and returned to his lodgings, after vainly desiring an interview with the Governor.

That evening he was visited by the ubiquitous Wakefield. Plausible as ever, he told Gourlay that he had been the author of a series of letters in *The Spectator*, seven years ago, in defence of the latter; he also, according to Gourlay, made the interesting statement that the reason he had sent him his pamphlet on "Colonisation" some years before was that he owed all his ideas on the subject to Gourlay. The poor Scotsman, delighted at meeting with recognition from so powerful a dependant of Durham, told Wakefield that he had even more elaborate theories on the subject now, and they chatted for some time about the way in which the British Government had followed Gourlay's plan in the settlement of South Australia. Wakefield went away leaving Gourlay in a state of pleased anticipation, but his interview with Couper was a cruel disappointment. The Governor could not see him and Gourlay sadly went away. He did not let this refusal cool his zeal against Mackenzie, and he was an active worker for

¹ Gourlay : "Banished Britain and Neptunian," pp. 20 *et seq.*

constitutional reform. He accepted Durham's Report as "passable," and he influenced many in Upper Canada in its favour.

Why Durham refused to see Gourlay can only be conjectured. The exile blamed the dislike of Buller for him at first, but it is hard to see why he held that opinion. The idea of a conspiracy against him on the part of the staff Gourlay also rejects after considering it, and blames Durham himself. He had once been a friend of Brougham, and apart from the fact that the ex-Chancellor had just been in a way defending Turton's appointment, Durham had no wish to incur the charge of having taken on his staff another ex-convict, for probably that would have been the result of an interview between Durham and Gourlay. Wakefield's intervention was for once a success, but it did not prevent Gourlay from making bad poetry about the "Durham ox which became a calf."

Despite Wakefield's failure with Papineau, Durham had not yet given up all hope of seeing his mission crowned with success, but the French grew more and more suspicious, thanks to Durham's frequent visits to Montreal, and the presence on his staff of Adam Thom and young Ellice, the one a bitter enemy, and the other the son of that most unpopular of British—a seigneur who farmed his estate for profit. Ugly rumours, too, began to fly about as to the past of other members of Durham's staff. Perhaps the moral turpitude of Turton and Wakefield did not concern them very greatly, but Roebuck took care that they should know how the former had been sent to England in defence of a system of class privileges by a body of English in India, not unlike the friends of the old oligarchy at Quebec; and how the latter and his master the Governor were warm advocates of a scheme for taking the waste lands of the province out of the control of the Assembly, and for colonising them with a body of English paupers. "Jaloux et ingrat, haut et bas" was the description of the French Canadians by a Frenchman, according to

Duncombe,¹ and Durham's staff was fast beginning to share his view.

The French were as little disposed as Roebuck had been to sacrifice themselves in order that Lord Durham might succeed. He could get members of both nationalities under one roof; French courtesy caused Lafontaine and the others to converse with Buller or their host, but they would go no further. Durham tells how he was asked to become president of an agricultural show at Quebec, in which the two nationalities would only compete in separate classes, and the ploughing matches had to be held in fields a long distance apart. Even the school children quarrelled as English and French, and the steamers sought patronage on the ground of their nationality. It was not so marked in Ireland, this intense national exclusiveness, and Durham tried to combat it in vain. Wishful to turn men's minds from politics for a season, he had offered on his first arrival a cup to be contested at the forthcoming Montreal races. A sidelight on Durham's character is cast by a little incident related by Richardson as occurring at the presentation of the cup to Mr. Yarker, the owner of the winning horse, Midas. One of the aides-de-camp, the Earl of Mulgrave, placed the cup before the Governor for delivery to the winner in a somewhat awkward manner. Before all the crowd on the racecourse Durham gave his subordinate a lesson in the proper way to offer it, and insisted that the Earl of Mulgrave should follow his plan. The French came to the races, but, although it is not recorded that they had here, as at Quebec, separate contests from the British, Durham could not make them cease their attitude of suspicion.

During the month of August Durham busied himself in administrative work. He had sent an invitation to the various Lieutenant-Governors to meet him at Quebec, and a similar meeting of delegates from the eastern provinces was to be held somewhat later. Durham did not consider himself bound by his instructions very strictly,

¹ Vol. I., p. 257.

and he understood very soon that it was hopeless to expect the Lower Canadians to elect any representatives to the proposed Council. He knew the opinions of the existing Legislative Council of Lower Canada, and he knew also that the French had no desire for federation in any shape or form, and certainly not with Upper Canada as Glenelg's instructions suggested. He did not expect any more profitable result from the presence of the Tory delegates, as those sent from Upper Canada were sure to be, and he was not disposed to take their view as representing the wishes of the Upper Canadians. Moreover, their¹ view was distinctly hostile to any scheme for uniting Upper and Lower Canada, although they had no objection to include in their province the rich city of Montreal, "as the inhabitants so earnestly desired it." They had, it is true, no such hostility, in theory, to the federation of all the provinces, and in fact had a scheme of their own which provided for the presence in the Imperial Parliament of representatives from the colonies.¹

Perhaps August was the happiest month Durham spent in Canada. Duncombe tells us of innumerable dinners, of whist parties, mesmeric exhibitions by Wakefield, and rides to the pretty Indian village of Lorette and to other places of interest in the lower province. He also mentions several occasions on which Durham was too seriously indisposed to appear. Durham had the society of congenial friends who encouraged his hopes. Letters to and from England were common, and all reports, public or private, agreed in ascribing great popularity to the Governor. Roebuck's scheme² was discussed, and it was agreed that it should be presented to the forthcoming congresses. *The Globe* newspaper in London gave a sketch of the scheme at the beginning of September, and said that it had been approved by the Home Government. *The Spectator* pointed out that it was the identical scheme propounded by

¹ Report of Committee of Assembly, March, 1838.

² For the scheme see Chap. I.

Roebuck before the passing of Lord John Russell's famous ten Resolutions, but apparently no one knew how Durham came to adopt it.

Durham was, however, ill at ease. Few, even of his intimates, knew of the private correspondence that he had been carrying on with Melbourne and Glenelg almost from the day he landed. The trouble arose out of the appointment of Turton and Wakefield to offices. It has been already mentioned that on a rumour that Durham intended to confer on Turton the post of legal adviser Melbourne had compelled Durham to promise that he should have no post under the Government. It soon became known, however, that Turton had sailed to Canada with Durham, and on April 30th the Earl of Winchelsea called Melbourne's attention to the matter. Relying on his interview with Durham, Melbourne assured him that not only had Turton not been appointed, but that he had no chance of appointment. The former statement was perfectly true because Durham had informed Glenelg that Ellice and Couper were the only members of his staff who were to be appointed in England. Soon the news spread that Wakefield also had left London, and on May 4th Glenelg wrote a private letter to Durham informing him that he had reason to believe Wakefield was on his way to Canada, and requesting that he should have "no regular appointment under the Crown," although, of course, there was no objection to his being employed "unofficially." Glenelg admitted Wakefield's abilities, but pointed out that any nomination of him to office would be unwise. Dr. Garnett¹ thinks that Glenelg's objection arose merely from an anticipation of the hostility of the French to Wakefield's schemes of colonisation, but Melbourne's letter of July 18th scarcely supports this view.

A letter from Melbourne, unfortunately now lost, was received by Durham about the same time as that from Glenelg; it apparently referred both to Wakefield and Turton. In reply, Lord Durham wrote to Melbourne on

¹ "Life of E. G. Wakefield," p. 167.

June 15th: "As for Mr. Wakefield, your letter arrived before him, and I have therefore been able, without compromising my own character and independence, to comply with your desire. He holds no employment or official situation whatever, nor will his name appear before the public at all. 'Oh, no! we never mention him; his name is never heard.' Really, if it were not very inconvenient, all this would be very ludicrous. But I am placed in a very painful situation. I am called to perform an almost super-human task. You provide me with no, or at most inadequate, means from yourselves, and you then interfere with the arrangements I make to supply myself with the best talent I can find." Durham apparently followed this up by a second letter, and both dealt with the affairs of Canada. He did not, however, take Melbourne very greatly into his confidence, which the Prime Minister resented. They never were good friends, and the estrangement which was to end in the great betrayal can be traced more and more clearly in every letter. Perhaps Durham's illness was caused largely by annoyance at the querulous letters almost every mail brought from Melbourne. He knew from friends in England and from the newspapers how the Premier was being harried by his opponents, and the tension of the situation was not lessened by the unreasonableness of the British and the suspicion of the French in Canada.

To Glenelg's letter Durham replied: "I had intended to have named Mr. Wakefield a Commissioner of Inquiry into the Crown Lands Emigration, etc., but in consequence of your letter have given up all thoughts of it, and Mr. Wakefield will hold no official situation of any kind under me or the Government." Wakefield did not hold any *official* appointment, but, as Buller, the ostensible Commissioner for Crown Lands, was employed on other duties, it fell to Wakefield to help Richard Davies Hanson, the Assistant-Commissioner. Wakefield was devoted to Durham, and submitted to the inevitable. His work will

be described afterwards, for he was more successful as a commissioner than as envoy to suspicious French Canadians.

To convince Melbourne that he had the support of all classes on his first arrival, Durham sent home a number of Canadian newspapers. In the Gazette were, of course, the names of the new councillors, and Turton was described as secretary and member of the Executive Council. Others saw Canadian newspapers too, and on July 2nd Melbourne was questioned as to Turton's appointment by Lord Wharnecliffe. Melbourne had to admit the truth of the report, but he maintained that he had given his former reply to the Earl of Winchelsea in all good faith. As usual Brougham patronised the Government when he was not attacking it, and maintained that after all Turton's crime was not strictly the one attributed to him by Wharnecliffe. The result of this question was a sharp letter¹ to Durham on July 2nd complaining of his action, not only in appointing Turton after his pledge, but also in keeping the Government in ignorance. He ends with a grudging approval of his other acts, but hints that as he writes without previous consultation with his colleagues, he cannot answer for any future action that may be taken.

Before Durham could receive this letter Melbourne wrote again on July 17th. "I will write once for all about this unfortunate and foolish affair of Mr. Turton. It will do you much harm, it will do me much harm, it will do your government and your mission some harm. It is one of those gratuitous and unnecessary difficulties which men most unaccountably create for themselves, and which are generally greater than any which are created for them by the natural course of events." Melbourne does not spare his reproaches against Durham for in the first place allowing himself to be advised into negotiations with Turton, and still more so for having actually appointed him immediately on his arrival in Canada, although he had been compelled

¹ Sanders : "Lord Melbourne's Papers," p. 425.

by popular opinion to abandon the idea of appointing him in England, and he did not know whether there was any likelihood of the appointment being unchallenged. "It is not fair to yourself, it is not fair to the Government, it is not fair to the important duty which you have undertaken to discharge, to array and to enlist against yourself so great a mass of popular feeling as you have done by the association with yourself and your government of this gentleman and of others whom you have with you. This feeling may be prejudiced and erroneous; but even if such be the case, it does not diminish its strength or render it less formidable."

Strong though this language of disapprobation was, the letter ends lamely. He promises to refer to the Turton case no more as Durham would have already received two letters from him on it, referring to the missing letter already mentioned and to the one sent on July 2nd. There had been in the interval since July 2nd a meeting of the Cabinet, but no one cared to suggest that Durham should be *ordered* to revoke Turton's appointment, for in the debate on July 3rd Glenelg had maintained Durham's power to appoint whom he pleased, and the ministry had no wish to see Durham in England at present. Melbourne, therefore, told him that although ministers were not disposed to push matters to an extreme, or in other words did not wish to give him an excuse to resign, they anticipated further trouble in parliament, and they hoped Durham would be prepared to accept the result if an adverse motion should be carried. A half-hearted appreciation of the rest of Durham's policy is expressed.

This reached Durham as he was preparing to receive the Lieutenant-Governors of the Maritime Provinces, and he understood quite well how much Melbourne's promise of support was worth. A high-spirited man would not have asked his nominee to tamely accept the confession that he could no longer rely upon the man who appointed him for support; he would have resigned the post of Prime Minister

since he was not master. Melbourne, however, clung to office despite the ridicule of his opponents, and driven by them, forgot his promise to Durham to worry him no more. On July 16th Winchilsea again returned to the attack, and asked what steps the ministry intended to take in the matter. Melbourne made the excuse that until ministers had communicated with the Governor they could come to no decision.

When the ministry *did* consult the Governor it was in the form of the half-whispered suggestion in Melbourne's letter of the 17th that he should induce Turton to resign. Turton apparently was willing to sacrifice himself, and the newspapers actually stated that he had resigned, but Durham was not the man to abandon a client because of his unpopularity, and Turton remained in Canada to the last. It was Wakefield's turn next, for on July 17th Winchilsea referred to a rumour that Wakefield had received an appointment and that Colborne had resigned. Melbourne knew nothing about the appointment, but believed that Colborne had resigned.

Melbourne had received a letter from Durham dated June 15th which promised distinctly that Wakefield's name should not appear before the public at all. On July 17th, however,¹ he wrote to Durham again, and said that although he believed Durham's assurance as to the employment of Wakefield, he wished to inform him that if Wakefield was appointed "no power on earth could prevent an address to remove both him and Turton from being moved and carried in the House of Lords, and I believe in the House of Commons." He, therefore, relied on Durham's assurance that he would not give Wakefield any public appointment or allow his name to appear in any public document, and that he would not put forward Turton in any more prominent situation, or place him in any other post of trust or dignity. He preaches Durham a short homily as to the effect on his own reputation of association with Turton and

¹ Sanders p. 427.

Wakefield, and refers to the age and character of the Queen as additional reasons for care. Melbourne would wish but cannot hope to have to write no more about the matter. Durham had written after the burning of the *Sir Robert Peel*, asking for fresh troops and a naval reinforcement. He was not disposed, however, to consult the ministry on his policy in Canada, and except for a promise not to give any more preferment to Turton, he refused to commit himself. He never informed Melbourne or Glenelg of the matter of the ordinance until the irrevocable step had been taken. There is a hiatus in the Melbourne correspondence from July 18th to August 19th. Thus Durham would be free from ministerial criticism during the eventful four weeks in which he met the Lieutenant-Governors and the Maritime deputies and decided to resign.

CHAPTER XIII.

RESIGNATION.

ONE of the first to be informed of Durham's plan of federation was Sir John Harvey, Lieutenant-Governor of New Brunswick. He arrived at Quebec early in August overland; the frontier between his province and the State of Maine was in dispute, and on New Brunswick the brunt of an American attack would fall. The province had thus much to gain from a federation of British North America, under which its powers of defence would be largely increased; but Harvey would not agree to Durham's scheme. Various reasons can be found for this objection; one was that after a political struggle almost exceeding that of Lower Canada in violence the popular party had prevailed upon Glenelg to grant their demands and surrender to them the control of all the revenues. Sir John Harvey, the new Governor, who came out in 1837, found the machinery of government working smoothly enough to render a new Constitution distasteful. Sir Charles Fitzroy¹ of Prince Edward Island and Sir Colin Campbell arrived a little later by sea. They were more inclined than Harvey to support Durham's proposal, for in each province the Assembly was making ever growing demands, although in Nova Scotia the reform leader, Joseph Howe, was as keen a loyalist as any one in the colony. Durham charmed his guests by his hospitality; they were feasted royally, and on August 24th Sir Colin Campbell was allowed to review the brigade of Guards on the Plains of Abraham.

¹ Fitzroy also consulted Durham as to the expropriation of the "Proprietors," the absentee owners of Prince Edward Island, and Durham devised, as he hoped, a satisfactory plan.—Report, p. 141.

On the 25th Durham escorted them to the harbour, where they embarked on board the *Medea*.

The preliminary conference seems not to have been so entirely satisfactory as Durham expected. The day after the Governors left Durham was seriously indisposed, and it was not until several days had passed that he was able to appear in public. His position was now no enviable one; he could not hope to carry his scheme of federation in the face of New Brunswick's opposition, and the rumours of unrest among the French gathered strength and probability. At one time, about the beginning of September, Durham planned a second tour to the upper province, but he waited for the mail from England, which was due soon by the *Great Western*, and when it came the news put an end to all idea of leaving Lower Canada. As if to throw Durham completely into the hands of the British party at Montreal, a French jury acquitted the murderers of the loyalist habitant Chartrand in the face of the clearest evidence. To hide their infamy, we are told,¹ the jury cried "*Non coupable*" in chorus, and no one knew who took the lead in this perjury. To the French the acquittal of these murderers was patriotism, but it made Durham despair of doing anything with a people who abused their rights in such a way. He informed Glenelg of the hopelessness of securing a conviction even in the face of the clearest evidence from a French jury. Glenelg's reply² was to recommend the creation of a special tribunal for the trial of future offenders. Even Glenelg saw that such flagrant contempt for law as the acquittal of Chartrand's murderers was sure to provoke attempts at revenge on the part of the loyalists. As for Durham, he felt that he had tried the French with mercy, and he had in the case of Chartrand offered them the arbitrament of the law, and henceforth he turned to Montreal and the British. He held that the connection between Canada and the Mother Country

¹ Duncombe, Vol. I., p. 264.

² Dispatch, dated October 26th.

should be retained at all events for the present, and he was at last realizing that only by depriving the French of their power to do harm could he obtain this end.

Durham was expecting the delegates from the Maritime Provinces about the third week in September, but before they had all arrived, the situation of the High Commissioner had altered still more for the worse. It has been mentioned that Durham sent home a dispatch on the subject of the ordinance, and on the motives which had guided him in issuing it. He did not, however, send any copy of the prisoners' plea of guilty or their confession, and of course he did not inform the Government of Simpson's mission. In reply he received the ordinary qualified approval, but it was hinted that the part of the ordinance relating to the banishment to Bermuda might cause difficulties.¹

The news of the ordinance reached England by the steamer *Pennsylvania* on July 29th, and other information arrived soon afterwards for Roebuck.² Melbourne says it was furnished by the prisoners themselves, but it is more probable that Roebuck heard from his step-father, Colonel Simpson, or from the organizers of the meeting of protest on July 4th. He was disappointed, for he had advised a complete amnesty. With this expectation in view,³ he had, at the beginning of July, written a long letter to Brougham in defence of Durham, and Brougham, who foresaw that the Governor-General could not possibly act as Roebuck desired, waited patiently. His opportunity soon arrived, for Roebuck, being himself out of parliament, was glad to find so doughty a representative in the Lords as Brougham.

The attack which Brougham was about to lead was only the final charge of Durham's enemies. Even the Tory newspapers admitted the High Commissioner's popularity in Canada, but they attributed it to unworthy arts, and both Tories and Whigs unceasingly criticised him. The account of his popularity with the French clergy brought

¹ Sanders, p. 430.

² *Ibid.*, p. 430.

³ Leader, p. 122.

up Henry Philpotts, Bishop of Exeter, Durham's old foe, with a question¹ as to whether the Earl had received instructions to treat the Roman Catholics more favourably. The reply was that after the passage of the Catholic Emancipation Act, such a course as the Earl pursued was the only proper one. On July 9th, a fortnight previous, Sir Edward Sugden had, in the House of Commons, attacked Durham for abolishing the existing Executive and Legislative Councils, and for appointing a fresh Executive Council of five members from his own suite. He asked Lord John Russell whether Lord Durham was acting in conformity with his published instructions in so doing, and whether the new special Council was composed in a manner similar to the Executive Council. Russell defended Durham as having acted to the best of his discretion, and said that the Canadians were satisfied. On July 30th Sugden took up the matter again, pointing out that not only was the special Council too small, but that Charles Buller was a member of either Council. Russell again maintained that Durham's action was approved of by the Canadians—the persons most concerned; the Attorney-General also defended Durham, and O'Connell expressed himself satisfied with the way in which the High Commissioner had exercised his despotic power in contradistinction to Sir George Arthur. The words "despotic power" brought up Sir Charles Grey, one of Lord Gosford's commissioners, who emphatically denied that the Act conferred on Lord Durham despotic power; such an idea would be ruinous to Lord Durham's behaviour in Canada, if he should accept it. His power really was, that as Governor-in-Council he possessed the legislative powers of the late Legislature of Lower Canada.

On the very day that Russell was maintaining Durham's popularity in Canada, and the legality of his special Council, Brougham opened the attack in the Lords.² Few

¹ "Hansard," Vol. XLIV., p. 483.

² "Hansard," Vol. XLIV., p. 755.

knew of his intention, even of the Radicals, and the ministry seem to have been quite unprepared for so fierce an attack. Quoting from New York newspapers, Brougham told of the appointment of the special Council, and of the banishment proclamation. If Durham carried out his threats in case the exiles returned, he would be guilty of murder. In the case of the Bermudan prisoners, they were at the utmost only guilty of a capital felony in returning, even if, as seemed not to have been the case, they had been regularly tried and sentenced to transportation. In the case of Papineau, Durham had broken the law twice, first by offering a reward of £1000 for his capture, and secondly by threatening him with death on his return without a trial. Durham's commission only allowed him to frame general laws; it did not give him power to make a sudden regulation under which men were to be hanged.

Ellenborough joined in the attack, maintaining that the ordinance had not been discussed according to the rules laid down by Sir John Colborne's Council, by which twenty-one days' notice was necessary, and, moreover, the three "readings" all took place on the same day. To make things worse, Ellenborough continued, only four of the five members who signed the ordinance were actually in Quebec on the 28th. Glenelg and Melbourne knew scarcely as much about the question as Brougham, and could only promise to lay the required papers on the table of the House; Melbourne said that Durham being present in Canada was likely to know better than they in England how to act, and that Brougham's conduct was highly imprudent, not to say unpatriotic, in view of the peculiar situation in Canada. Brougham denied the charge of want of patriotism. While the Bill was being discussed, they were asked to grant the most ample powers to Durham, because parliament could always interfere; Durham had exceeded his powers, for it could not be necessary to hang a man without a trial.

Brougham's law was sound enough, but he did not know

the facts except according to Roebuck's version. The truth is that Nelson and his associates expected a free pardon coupled with voluntary exile, but in the face of Glenelg's dispatch, and of the opposition of the British, Durham dared not make the amnesty complete. That he wished to, and intended to, recall the prisoners at the earliest possible moment is clear from his negotiations, through Wakefield and Buller, with the French leaders, and from the actual ordinance.¹ Durham was no lawyer, and in common with those who should have been able to advise him better, he hoped that a breach of the law in a season of lawlessness would be condoned in view of its object. He trusted to his vague, ill-defined powers, and he seems to have really known, from a later dispatch, that he had no power to secure the detention of Nelson at Bermuda without the consent of the Island Legislature. We need not call this an after-thought as some were disposed to do. To understand Durham's motives it is necessary to read carefully the important dispatch which he sent to Glenelg on June 29th. He says that it was impossible to find sufficient evidence to justify extreme measures against more than eight or nine of the prisoners. He maintains that he had in view in all his addresses and speeches the course he actually followed, and that he intended to force Nelson and the rest to act as they did. Moreover, Durham did not actually threaten to put the exiles to death without a trial if they returned, but expressly provided in the ordinance that they must first be convicted of being at large in the province without permission, and he reserved to himself and to his successors the right to grant a pardon. Brougham's legal casuistry enabled him to see the flaw in Durham's ordinance; had he acted without the Council and forced the prisoners to give their parole, it is probable that his action would have been un-

¹ “. . . it shall and may be lawful for the Governor . . . so soon as it shall appear to him consistent with the peace and tranquillity of this province, to grant permission,” etc.

assailable. It is what the prisoners themselves intended, and they had able assistance in drawing up the letter. At first they seem to have interpreted Durham's action as granting their desires, and but for the meeting of the extremists at Quebec on July 4th, it is probable that Durham's mission would have been a success.

However, Melbourne and the ministry were ignorant of the real meaning of the "other means," by which, according to the dispatch, Durham had procured the qualified plea of guilty. They were not very eager in the mass to defend Durham, and Brougham soon had at his back the whole force of the Tories and Radical "Friends of Canada." The papers relating to the ordinance had been produced, and seemed to Radicals like Hume and Leader to prove that Durham was no true friend to the French as they had thought. They joined with Brougham in his thirst for revenge; he also wished to patronise the ministry which refused to recognise his abilities, and in this he drew near to the Tories who were eager for its fall. The newspapers discussed the matter, and *The Spectator* said Lord Durham had not a single friend in the House of Lords to see that he had fair play. *The Morning Chronicle* naturally defended Durham whole-heartedly, and *The Standard* said that as the Governor-in-Council had the whole authority of Government, he had consequently power of amnesty and attainder. On the whole, except in the extreme Tory and Radical quarters, the view was that although Lord Durham had obviously stretched his authority to the utmost, his action should be upheld by the Government.

On August 7th Brougham produced the result of his week's preparation. He assumed that Durham had inflicted pains and penalties for high treason on persons who had not been tried. This contravened the Act passed in the seventh year of William III. In 1715 parliament heard witnesses before passing a Bill of Attainder against the Jacobite fugitives; Durham had heard no evidence. Thirdly, the sole counts on which men could be found

guilty of high treason were settled by the Act 25 Edward III., but Durham had announced that the Canadian prisoners would be guilty of high treason if they left Bermuda. Again, by exempting the murderers of Weir and Chartrand from the scope of the ordinance, the Governor-General of Canada had proclaimed that he had powers superior to those of the Queen, who would be unable to pardon them. The powers of the Governor-General of Canada under the Coercion Act did not extend to Bermuda, and any person who attempted to detain the prisoners there would be liable to an action for false imprisonment. Lord Durham had been granted large powers, despite the danger of such a course being pointed out; he had misused them and his proceedings were opposed to every principle of English law.

The plan of attack was perfect, and Brougham was enjoying a double revenge; he had never forgotten Durham's Edinburgh speech, and he hated Melbourne's ministry none the less because he despised it. Glenelg made a feeble reply; his main plea was the peculiar condition of Canada, and he denied that the ordinance was illegal. Brougham played with his opponents like a cat with a mouse, and offered to be convinced if the Chancellor would say that Lord Durham's powers under the Act actually did give him power to contravene the Act of William III. and 25 Edward III. Ministers may have intended to give him greater powers, but the question was, had they managed to do so?

The ministry understood that he referred to the way in which their Bill had been altered by Peel. Melbourne had to say something in defence of Durham's peculiar position, but declined to accept Brougham's challenge as to the legal points involved, as he was no lawyer. He admitted that Durham's powers did not extend to Bermuda, but he was ready to defend the remaining parts of the ordinance. Ellenborough supported Brougham, and the latter turned on the ministry with a demand for a copy of the legal

opinions which justified Melbourne's assertions, and also moved for a return of the date at which Sir Charles Paget first attended the Council. Lord Brougham ended by saying that he was "neither prepared to remove Lord Durham, nor to create him absolute in Canada, to put him above all law, and to allow him to supersede the very authority that sent him there."¹ He was really doing Lord Durham a service in acting as he did, and pointing out the actual limitations of the great authority he possessed. After other speeches Brougham announced that he would introduce a declaratory Act defining what the Earl's powers under the Act really were.

On August 9th Brougham moved the Second Reading of his Bill, disclaiming at the same time any motive of personal hostility. He gave Nelson's version of their plea of guilty, and said that they had been willing to go to Bermuda because a plea of not guilty would have been useless in the existing state of the Jury Law in Canada, and knew that they could not be detained in Bermuda legally. He then pointed out that the ordinance had been so hastily drawn up that it was full of mistakes as to the names and crimes of the exiles, mixing up those guilty of sedition merely with actual rebels, and in one case condemning a man, Louis Perrault, who had left Canada on business long before the outbreak. He proposed to accept an Indemnity Act together with the Declaratory Act, but he refused to agree to an Indemnity Act which would cover the cases where the innocent or wrongly-described prisoners were concerned.

Brougham's Bill was not very carefully drawn up, and Glenelg pointed out that it condemned Durham unheard quite as clearly as he had, according to it, condemned the prisoners. The better course would be to write to the Governor of the Bermudas and order him to free the prisoners. He held, however, that the ordinance was within the competence of the Council as the late Legislature

¹ "Hansard," Vol. XLIV., p. 1031.

was allowed by the Act of 1774 to amend the English criminal law whenever the peculiar circumstances of Canada made it necessary. Lord Brougham's Bill really sought to restrict Durham's powers. The Earl of Ripon, the Lord Chancellor, and Lord Lyndhurst took part in the debates, generally in a spirit hostile to Durham. Learned expositions of the law as to high treason were given, and Melbourne, who followed Lyndhurst, must have realized that the Bill could not be resisted.

Melbourne knew that he was in a perpetual minority in the House of Lords, and so he did not attempt to defend Durham so much as to find excuses for the presumed stretching of his authority; he had thought that Durham's appointment had received the unanimous approbation of the House, and it was unwise to weaken his authority in Canada at so critical a moment. The Tories in the House of Lords were led by Wellington, and this insinuation that they had shared in the appointment of Durham called forth from the Duke a vehement denial. As a patriotic statesman he had certainly tried to strengthen the Government's hands, he admitted, but he and his friends at least had never meant to make Lord Durham an absolute ruler. Personally he would prefer to pass only an Indemnity Bill, and leave it to the Government to take such steps in the matter of Papineau's illegal banishment as would render further action unnecessary.

It was the end of the session, and Melbourne had no further arguments, as his own Chancellor had supported Brougham; the Bill passed the Second Reading by 54 to 36. On the following day Melbourne formally accepted the Bill of Indemnity, and announced that the ministry had resolved to advise the Queen to disallow the whole ordinance.¹ He knew the probable result of his action, as his

¹ At the Cabinet meeting Spring Rice proposed that the Bermudan Legislature should be asked to pass an Act legalising the ordinance, but Howick said the request would be in vain. — See Torrens, Vol. II., p. 269.

words show: "I cannot but say that it is with the deepest regret and alarm that I have taken this course, nor is it without the very great apprehension of the consequences that I have come to this determination."¹ He insisted that Durham only held out the threat *in terrorem*, and that the Lords by their action were striking at the root of all authority; they could not mean to tie down the Governor-General to every detail in an Act of Parliament. Brougham and Wellington complimented Melbourne for his good sense in accepting the Bill, but Lansdowne maintained that Durham had not acted in a different manner to Sir John Colborne, whose Act of Attainder had not been attacked. Brougham agreed that Lord Durham had the same powers as Colborne, but he declined to say whether Colborne had exceeded his powers. One reason for his diffidence was probably the fact that Wellington would have defended his old subordinate.

When the Report was brought up Melbourne made a last desperate attempt to save the honour of the ministry by an amendment which would practically give Durham absolute discretion as to his course of action. Ellenborough the lawyer saw the intention and opposed Melbourne. Brougham cruelly remarked that the amendment was merely an attempt to placate Durham by saying in effect, "Although we have been obliged to disallow your ordinances, yet we have got you a great power." Seeing he was helpless, Melbourne withdrew his amendment. On August 13th the Bill passed its Third Reading. Durham had been ruined by two men—Lord Brougham, the author of the Bill, and Sir William Follet, the author of the proviso in the Suspending Bill that the powers of the special Council were strictly limited to Acts in conformity with the laws of England. Melbourne must share in the blame; he should have resigned if he could not carry a Bill to supplement the ordinance. If he held that Durham was entirely in the wrong he should have recalled him.

¹ "Hansard," Vol. XLIV., p. 1129.

On August 13th Lord John Russell moved the First Reading of the Bill in the House of Commons, and despite the objections of Leader, secured that the Bill should be read the first and second time. Leader referred to Charles Buller's letter¹ defending the ordinance which Easthope had inserted in *The Morning Chronicle* for August 13th. It was the best defence the friends of Durham could think of at the moment, but the question was now one of law, not of fact, and, moreover, the "Friends of Canada" denied that the exiles had petitioned to be disposed of without a trial; they had only thrown themselves on the mercy of the Crown. On August 14th the House went into committee on the Bill, Russell first explaining that he did not intend to propose any amendments. Russell's speech was one of the finest he ever made. He pleaded eloquently for Durham, and maintained the essential legality of the ordinance except so far as related to banishment to Bermuda. "I ask you to pass this Bill of Indemnity," he said, "telling you that I shall be prepared, when the time comes, not indeed to say that the terms or the words of the ordinances passed by the Earl of Durham are altogether to be justified, but that, looking at his conduct as a whole, I shall be ready to take part with him, I shall be ready to bear my share of any responsibility which is to be incurred in these difficult circumstances." He skilfully adduced the written protests of Brougham and Ellenborough as evidence of the despotic power conferred on Durham, and he insisted that he personally had intended that the Earl should have powers exceeding those of Sir John Colborne, who had passed the ordinances upon which Durham's ordinance of June 28th appeared to be founded.

Leader would not be conciliated, but made a savage attack on Lord Durham, on the constitution of the Council, and above all, on his late friend Charles Buller and his letter. Again he denied that the prisoners had pleaded

¹ *Ante*, p. 149.

² "Hansard," Vol. XLIV., p. 1228.

guilty, and quoted copiously from their letters and from that of Buller. He also attacked the Police Ordinances, the relations of Buller with Adam Thom, and the appointment of Arthur Buller to be judge of the Court of Appeal. He concluded with a sneer at Melbourne's readiness to sacrifice Durham, even in the House of Commons, where he had a majority.

Sir William Follet, the author of the proviso in the original Bill that was responsible for the trouble, made a long speech defending his action. The Attorney-General attempted to defend Durham on the lines of Lord John Russell's speech, but he admitted that as the ordinance was a legislative Act, and Durham's authority did not extend beyond Canada, it was *ultra vires* for him to order the confinement of the exiles at Bermuda. Curiously enough Sir Charles Grey maintained the view, which Durham in one of his later dispatches put forward, that by the Acts 5 Geo. IV. c. 63 and 6 Geo. IV. c. 59 even the Bermuda section might be justified. These Acts regulated the transportation of convicted felons from the colonies, and the probability is that Durham really was relying on the Imperial Government including the Bermudas among those colonies to which convicts might be sent. At any rate he explained in his dispatch of June 29th why he had not sent Nelson and the rest to the ordinary penal settlements of Australasia, and it remained for the law officers of the Crown to advise the ministry to make good the defects.

In the newspapers the comments were seldom respectful to the ministry, although most of the Government journals admitted that the ordinance could not be defended so far as it referred to Bermuda. It was necessary now that Durham should be informed, but Melbourne postponed the evil day as long as he could. It was not till August 19th that he wrote to Durham.¹ He maintained that the ministry had done their best to defend him, but that they had not

¹ Sanders, p. 429.

been kept so well informed as Brougham had been. He requested that Durham's suite should not write home in the way Buller had done, but that Durham would keep the Government well posted as to his proceedings. There is not a word to show that Melbourne expected Durham would resent his letter or the action of the ministry. Speaking of the future, he writes: "The only safety lies in strict observance of the powers, in adhering to forms as well as to principles, and, if you are obliged to deviate from either, in making apparent the grounds and reasons for such deviation." He was sure that the "untoward circumstances" which had taken place would only encourage Durham to persevere in his task the more.

Unfortunately for Melbourne, this was not the first intelligence Durham had received of the proceedings in parliament.¹ On September 19th Durham saw a copy of an American newspaper containing the report of the debate in the Lords on August 7th, 9th, and 10th. Buller, who was present at a dinner in the Governor's chateau, saw from the expression of his face that he had received a violent shock²; the party broke up in confusion, and Duncombe, Turton and Buller retired to the latter's house to talk the situation over.³ The news soon spread throughout Lower Canada and the other provinces, and produced a painful sensation. The Maritime delegates were thronging Quebec,⁴ and on September 22nd Durham was to meet them. On the 21st Durham received an ovation at the theatre, and nearly four hundred callers of all shades of opinion signed their names in a book at the Castle. The Maritime deputies, whose meetings with Lord Durham had already made them his enthusiastic admirers, presented an address on the 22nd, expressing gratitude for past kind

¹ Duncombe, Vol. I., p. 255.

² Garnett, p. 172.

³ Duncombe, p. 255.

⁴ Young and the Nova Scotian delegates, together with those from Prince Edward Island, arrived on September 12th, the rest somewhat later.—Martineau, Book V., Chap. XII.

offices and confidence in his future plans ; they earnestly besought him not to resign his post.

Durham made two replies : the first was purely formal, but the second was a passionate appeal to his audience. In his formal reply he stated that he was proud of the achievements of a few short months, and that he was on the point of promulgating various salutary laws, and of proposing a scheme of federation which, if they accepted it, he intended to bring before the Imperial Parliament. "In this, I trust, useful course I have been arrested by the interference of a branch of the English Legislature, in which the responsible advisers of the Crown have deemed it their duty to acquiesce. Under these circumstances, I have but one step to take : to resign that authority the exercise of which has thus been so weakened as to render it totally inadequate to the grave emergency which alone called for its existence." He assured them, however, that this unexpected and abrupt termination of his official connection with British North America would not weaken in his mind his deep interest in their fate.

This was very decorous and colourless, but after a moment he turned to the delegates and addressed them as "friends." He thanked them for coming to meet him, and rejoiced that they were all so eager to retain the Imperial connection. He was happy to find that but one sentiment prevailed—a determination never to be separated from the home of their fathers. Amid all the perplexities that had surrounded him he had found consolation and pleasure in looking forward to the prospect of a settlement of the many difficulties which presented themselves at almost every step. The calling together of the delegates from the lower provinces was a subject on which he had bestowed a good deal of thought ; and he had entertained hopes that some plan could be adopted which would benefit each province and strengthen the bonds of the whole, thereby shedding a lustre on that country which of all others might be considered the glory of the world. Difficulties might

have presented themselves in the arrangement of a union, but he assured the delegates that his great object would have been for the good of the whole and not particularly that of the Canadas; he would have heard with attention every argument that could have been brought forward, and would have endeavoured to satisfy all. He declared that whatever he did should be done openly and fairly, and never would he make use of deception to gain any point; that was the language he used to the Emperor of Russia, when he was ambassador to that Court, and that course should guide him in all his pursuits through life.

Alluding to the Canadas, he said they were very imperfectly known to those at home. He knew very little about them while in England. He came out not to gratify his own personal feelings, but to obey the commands of his Sovereign. His views of this country had greatly changed since he became acquainted with her resources and with a portion of her inhabitants; and wherever he might be called, and however employed, he should always cherish an ardent wish for the prosperity of this vast country.

It had been his aim and the dearest object of his wishes to be able to inform Her Majesty that her fine possessions in British North America might be considered one of the finest gems in her dominions, that the entire population were in a state of harmony and friendship, and that each party was striving which could promote the good of the whole. He had not yet brought into action those measures which were intended for the good of the country, but several of them were nearly completed, and would almost immediately have been made public.

At a moment when he was about to complete those plans which had been maturing, party spirit had interposed her withering hand, and blasted all his hopes for the welfare of the Canadas. He could not, he did not wish to conceal from the gentlemen present that the recent intelligence from England, though not official to him, had made a very

deep impression on his mind. Opposition from Lord Brougham and from those acting with him was no more than he might expect, but he was compelled to say that *he had been put down—sacrificed—by his friends!* those whose duty it was to stand forth in his defence, at a period when his political enemies were using their utmost energies to destroy him.

At this point Durham broke down; he was in weak health, and the strain of the past few days had been too much for him. It was not merely a disappointment: it was, in fact, rather a realization of his fears, which had seemed more and more probable with every letter from England. He had been scoffingly told by Chandos and the Tories that his mission to Canada had not been meant as a kindness to him, but as a trap devised for his ruin, and the abbreviated version of the debate which he had hitherto seen only supported this statement. Retiring to a corner of the room, he gave way to his feelings unrestrainedly; after a few moments he recovered his self-control and apologised to those present. Durham was no actor, but if he had been he could have devised no more effective means of getting into the sympathy of his auditors. They shared his indignation against the ministry, and conceived a bitter dislike to Brougham and his Tory allies. Continuing, Durham said it was the duty of Her Majesty's ministers to support him in the hour of persecution, and *not to join with his bitter foes in striking at his head.*

Deprived of all ability to do anything for Canada, it could be of no use for him to remain longer in the country; and he should leave it as soon as he received the official account of the parliamentary doings. It was his intention to be on his way to England by October 10th.

This second speech lasted about ten minutes, and at the end Durham cemented the friendship between himself and the delegates by his care for their welfare and return. Of course a conference as originally intended would be useless

now, but with such of the delegates as remained behind Durham had frequent conversations. He was very favourably impressed with one of the leading reformers from Nova Scotia, named Young, who gave him valuable information as to the working of the constitutional system in the Maritime Provinces. Besides the actual representatives of the Legislature of each colony, whose presence had been provided for in the Governor's instructions, there were in Quebec various persons who gave evidence before the different Commissions. The delegates and witnesses from the Maritime Provinces were frequently members of the reform party in their respective States; perhaps Durham was inclined to trust them the more from that circumstance. One of the witnesses, Lelacheur, was the Papineau of Prince Edward Island.¹ He will be mentioned in dealing with that province, but his evidence was contradicted by one of the Island's law officers. Durham, however, did not find the Maritime representatives willing to accept his plans without modification. The provincial spirit was strong, and although they would agree to a scheme of federation, it would be a very loose one indeed, and they did not appear to be at all anxious for the abolition of the Legislative Council as proposed in Roebuck's scheme; their ideal, as Young and Howe in Nova Scotia and Wilmot and Crane in New Brunswick declared, was a system of responsible, or semi-responsible government, similar to that already established in New Brunswick. We shall not be far wrong in tracing to his relations with men like Young the final renunciation by Durham of any hope of carrying out Roebuck's scheme. To those of the delegates who wished to return home at once the Governor offered a passage in the *Medea*, but many remained for a time at Quebec.

As soon as the news of the disallowance of the ordinance came the extremists threw off the mask. It is true that they had no longer *The Vindicator* or *La Minerve* to

¹ See pamphlet, "Facts *versus* Lord Durham," by a Proprietor.

encourage them to action, but even the lately Moderate organs, finding that Durham, whom they had feared, was not after all so very formidable, began to talk of the future with renewed hope. Among the habitants the midnight meetings for drill recommenced, and many who had hitherto held aloof joined the conspiracy; no definite plan of revolt existed, but their leaders hoped that Durham's resignation would be a good opportunity for their success. Colborne and Durham were almost as well served by spies as Sir George Arthur in Upper Canada, and they knew of the preparations all along the American frontier, not only by the Hunter Lodges, but also by the French exiles under Nelson. A few desperate men actually plotted to seize the Isle au Noix, about the end of September, in imitation of Mackenzie. The fort was well armed and Colborne was vigilant, but the will to rebel was present among many of the habitants in the Richelieu basin.

Upon the British the news of Durham's approaching resignation fell with crushing force. Meetings were organized in Quebec, Montreal, and Upper Canada. The whole British party fell into line; even those who had been inclined to carp at some of the details in Lord Durham's plans forgot their opposition in the present fear. *The Quebec Gazette* energetically defended Durham against the ministry. "The blow has fallen on us with a force that appears for the moment to have paralysed all feeling," said Neilson's paper. "Men hardly dare ask what is now to be done; the most gloomy apprehensions are entertained, but, we will yet hope, needlessly. Our prospect, which Heaven knows was dark enough before, has been rendered more gloomy by the conduct of the ministers in denying their support to the local Government, whose measures, conceived in a knowledge of the actual state of the colony, were framed to meet the exigencies of the dangerous position in which it was placed. It is clear that had the leaders of the rebellion, sent to Bermuda, been brought to trial, the jury would have acquitted them in the face of any evidence, no

matter how direct and strong, as did the jury that acquitted the murderers of Chartrand." *The Montreal Gazette* was even more severe upon Melbourne than Neilson had been. "We cannot conceive how any man of high spirit could submit to the utter degradation of serving a Government who have neither the power to support him in the exercise of his public functions, nor the courage to defend him and themselves from the factious insults of party politicians, or the more infamous inroads of personal and jealous enemies. A ministry so utterly weak and incapable as a Government, so grossly ignorant of the duties of their station, of their obligations to their Sovereign, and of their responsibility to their country, are totally unworthy of being favoured with the services of any man of honour who values his own reputation. It is therefore no wonder if the Earl of Durham has resolved upon abandoning the future administration of the affairs of these provinces." And *The Montreal Gazette* represented the Moderates in the British party!

At Quebec Lord Brougham was burnt in effigy to the accompaniment of groans and hisses, and some of the hotter spirits wished to treat Melbourne and other ministers with similar insults. On Wednesday, October 23rd, a great meeting was held at the Quebec Exchange; Andrew Stuart took the chair, and although Duncombe¹ describes the speeches as bad, there was great enthusiasm. The meeting was called by the Executive Committee of the Constitutional Association of Canada, and was a last attempt to persuade the High Commissioner to remain. Four Resolutions were passed. The first expressed confidence in Durham as Governor of British North America, and the meeting's regret at the action of the Imperial Parliament, and at the feeble and inefficient support given by the ministry; the second regretted that Durham was about to leave Canada at the very moment when he had grasped the cause of the trouble, and when they were

¹ Page 258.

“hoping that the difficulties would be met by some comprehensive measure calculated to take from the turbulent disaffected the power of using their political rights to the injury of the peaceable inhabitants.” The third Resolution declared the legislative union of the Canadas was the only remedy, as the scheme for federating all the British North American colonies would be inadequate and only multiply the present subjects of discord. The final Resolution invited Durham to continue in his post.

A meeting was also held at Montreal, but under rather different conditions. Adam Thom was present; he had joined the staff of Lord Durham, it was well known, and men looked to him as able to give them information of the Governor's real plans. The British of Montreal were feeling dissatisfied with Durham until the news that he was about to resign made them remember what that resignation would mean to them. Their dissatisfaction was due to his presumed hostility to their pet scheme of a legislative union of the two provinces, for in one of the few definite declarations of policy he had made in Upper Canada he had expressed himself in favour of a federation of all British North America. Durham had convinced Thom that the proposed union of the two Canadas was hardly probable in view of the unwillingness of the people of Upper Canada, and Thom himself was beginning to realize that if Baldwin and Lafontaine should combine, as they afterwards did, the position of the British at Montreal would not be improved.

Thom's appeal to his party that they should support Lord Durham was well received, when he could assure them that the Governor thoroughly accepted the necessity of making Lower Canada British. He followed up his speech at the meeting by a series of letters to the *Herald*; perhaps he took upon himself too much in representing that he expressed Lord Durham's views officially, but to the position held by Thom, Lord Durham had now been driven. According to Thom's letters, the Earl's reluctance to the legislative union arose from his knowledge that it

would fail to achieve the ends desired ; in Thom's words, "there are too many Republicans in Upper Canada." The plan which he asserted that Lord Durham favoured was the one already recommended by Roebuck. To the British, however, it seemed insufficient check upon the French that they should be subordinate only to the Federal Legislature when the Legislative Councils were abolished. They would have preferred Sir Charles Grey's scheme of a fresh partition of Lower Canada. Thom¹ then announced that the abolition of the Legislative Council was no vital part of the scheme in a letter dated September 29th.

It was essential to Durham's success that he should create a following for himself among the French, and it was his failure to do so which convinced him that he could serve no useful purpose by remaining in Canada. We must consider the Quebec Resolutions as the result of Thom's speech and letters, for the case of L. M. Viger, president of the "Banque du Peuple," could only be interpreted to mean that Lord Durham had failed in his object and must now come to terms with the British. The Montreal meeting had declared unanimously for the legislative union, but there was yet a chance that both the British and the French would accept a combination of the schemes of Roebuck and Grey, under which the lower province was to cede the Montreal district to Upper Canada and the eastern counties to New Brunswick. This scheme had been frequently advocated by Ellice's newspaper, *The London Morning Chronicle*, for it would give to Upper Canada the seigneurie of Beauharnois. It was impossible, however, to get the French to consent to the dismemberment of Lower Canada, and without their consent the new Lower Canada could only be governed by a military force. The *London Times*, attacking its rival, said the whole scheme for uprooting French nationality was formed in the interests of Ellice and the Montreal merchants, and perhaps Durham's refusal to acquiesce in the dismemberment scheme without

¹ Cf. *The Spectator*, 1838, p. 1085 ; and Sanders, p. 439.

the consent of the French was the final cause of his breach with Ellice.¹

To explain why the French refused to have any dealings with Durham needs an account of the case of L. M. Viger. This affair was going on at the same time as the attempts of Lafontaine to secure his trial. Viger had been a member of the Assembly, and became President of Papineau's Banque du Peuple. He was an able man, but somewhat of the type of Craig's opponent, Pierre Bedard. He was no revolutionist, although he was a strong nationalist, but he was arrested in November, 1837, and was confined till Durham's arrival without a trial. No charge could be proved against him, and he stubbornly refused to give the usual bail when the prisoners were released under the ordinance. The period for which Colborne had suspended the Habeas Corpus ended on August 25th, 1838, and because, like his friend Lafontaine, he was refused a trial, he determined to wait till the Habeas Corpus Act was automatically restored. A few days before the 25th Buller called at the prison, and tried to persuade him to give bail; all schemes to win over Lafontaine and Papineau had failed, but Viger would have been almost as useful to Durham, and there is nothing improbable in the statement that hopes were held out of Government patronage for the Banque du Peuple.² Viger was as obdurate as Lafontaine, and then Buller foolishly tried threats; Viger's lawyer was informed that his client would have to submit to an ordinance. Viger insisted on applying for a writ of *habeas corpus*; the judges took a day to consider the matter, and before it had expired an ordinance was sent to Montreal, under the provisions of which Viger could be retained in prison.³ Viger then gave way and found bail for 20,000 dollars. Durham had acted within the law, but it was not the way to win the confidence of the French,

¹ Cf. Letter from Ellice to Melbourne, Sanders, p. 438.

² Cf. Report, p. 26.

³ *The Spectator*, 1838, p. 989.

and the time was soon to come when they remembered only incidents like the cases of Viger and Lafontaine.

These digressions have been necessary to give a clear idea of the feeling in Lower Canada at the time of Durham's speech to the Maritime delegates. It is time now to consider the effect of Brougham's action on Durham himself. It has been said that the news first reached him on September 19th, in the columns of an American newspaper. His first thought was to resign; Durham was a passionate man, and smarting under the betrayal he had suffered, he only thought of his personal feelings. Perhaps his reception by the delegates appealed to the nobler side of his character, and it was not until September 25th that he wrote his first letter of resignation. He said that he had relied on two things alone for ultimate success, first the great extent of his powers, and secondly the feeling throughout the colonies that he could rely for support on Her Majesty's Government. By the proceedings in parliament he had been deprived of both these, and now that his prestige was gone he had no option but to resign. The constant attacks to which he had been subjected in parliament had disposed him to resign earlier, since he had not met with that defence from the ministry to which he felt he was entitled; but he had determined to struggle on, until he saw in an American newspaper the account of the debate of August 7th, 9th, and 10th. He had at present, however, no other information, but he was determined to quit his post at the earliest opportunity.

On the 26th Durham, Duncombe, and Colonel Grey were starting for an excursion outside Quebec, when they saw the steamer arriving.¹ The two latter went to meet it, and brought the mail bag to Durham in Spencer's Wood. It contained the official notification of the disallowance and of the Bill of Indemnity. Glenelg's dispatch informed the Governor that the law officers of the Crown were ready to accept all the ordinance except the provision applying

¹ Duncombe, Vol. I., p. 256.

to the exile to Bermuda, but that it had been so severely attacked that the ministers had been most reluctantly compelled to advise that Her Majesty should disallow the whole of it. Durham was advised to pass another ordinance subjecting the prisoners to some penalty short of death, if they should return from Bermuda without permission ; he was to announce publicly that Papineau and the fugitives would be arrested and dealt with according to law on a charge of high treason. He was also advised to suspend the Habeas Corpus Act with as much publicity as possible, and the dispatch concluded by assuring him that the ministry would give him all possible support in his arduous duties. Durham knew how much ministerial assurances were worth by this time.

On the 28th Durham sent his reply to Glenelg's despatch. He ridicules Glenelg's statement that the ministry had done their best for him ; he rightly says that a defeat in the House of Lords, where Melbourne never had a majority, would not have mattered, for it had always attacked him, and Melbourne could surely have counted on the House of Commons for support, and the colonials would not have taken much notice of the vote in the House of Lords. The ministry accepted Brougham's Bill to stop hostile proceedings in the House of Lords, and the Bill of Indemnity is an insult, for it assumes that the prisoners whose lives he had saved would sue him for damages. The demand that he should proclaim the Acts in Canada makes him join in condemning himself. He then ably defends the section of the ordinance which relates to Bermuda ; he knew quite well throughout that he had no power over the prisoners after he had landed them on the Island, but he expected that the Island Legislature or the Imperial Parliament would have passed Acts to complete the ordinance.¹ The words authorising Her Majesty to impose restraints on the prisoners at Bermuda were mere surplusage, for unless she already had that power they had no force, and

¹ Cf. *ante*, p. 186, n.

did not make the entire instrument containing them illegal. If the ordinance were inoperative through some technical defect, they should have given it effect; if illegal, they should have made it law. His policy had been approved almost universally, both in Canada and the United States, and its general merits had not been denied even in the Imperial Parliament.

After stating that henceforth his government of Canada cannot be a success, he attacks Glenelg's proposed substitutes for the ordinance. They are inconsistent and unfair, unless Papineau and Nelson are treated alike; he refuses to suspend the Habeas Corpus. The sting of the dispatch lies in the tail. He would remain in the country a few weeks longer for the purpose of completing certain measures and inquiries; the government of those colonies required something more than a knowledge of common and statute law, and he should never regret having wielded his despotic powers in a manner which he was anxious to declare inconsistent with the British Constitution till he learned "what are the constitutional principles that remain in force when a whole Constitution is suspended; what principles of the British Constitution hold good in a country where the people's money is taken from them without the people's consent; where representative government is annihilated; where martial law has been the law of the land; and where the trial by jury exists only to defeat the ends of justice and to provoke the righteous scorn and indignation of the community."

This dispatch is Durham's real answer to his opponents, and it is conclusive. He took as his guide *Salus populi suprema lex* and acted up to it throughout. Before the legal pedant he has no defence,¹ but before everyone else his defence is complete. Had he succeeded in the impossible task of appeasing the French and the British alike, no one would have blamed the ordinance. Had he been

¹ See, however, *The Spectator* for 1838, p. 825, for an analogy between the cases of John Lilburne and Nelson.

a mere politician, and chosen to support the British at their own price—the legislative union of the Canadas—he might have returned in triumph, but left behind a legacy of French hatred for the Empire. He took his stand on true as opposed to legal justice, and he fell because chance had it that the two great political parties of England were of equal strength, and an able unforgiving lawyer was at once the enemy of Durham and of the ministry who appointed him. Durham might have won cheap glory, and possibly the allegiance of a Leader and a Roebuck, by denouncing only the wrongs of the French. They had wrongs, it is true, but the British of Montreal had wrongs also, and Durham the Radical dared to say that oppression even by a democracy was a crime.

CHAPTER XIV.

THE RETURN TO ENGLAND.

ALTHOUGH Durham had announced to the delegates from the Maritime Provinces his intention of returning to England, men still hoped that he could be persuaded to reconsider his decision. According to Torrens,¹ Charles Buller talked him over, and he wrote privately as though he might still be coaxed to stay for the sake of the public service. That Buller did his best to prevent Durham from going home is borne out by another circumstance, and we can be sure that Slingsby Duncombe and the others with whom he had frequent conversations about this time supported Buller. Buller's intimacy with Lafontaine and Morin has been already noticed, and also the many attempts he made, in company with Wakefield, to enlist a party among the French on Durham's side. The ordinance had failed; Papineau was timid, and Lafontaine and Viger obstinate; but one more leader remained, A. N. Morin, whose influence was greatest in Quebec. When the British of Canada burned Lord Brougham in effigy, and held meetings calling upon Lord Durham to remain, and advocating outright the reunion of the Canadas, the French, now somewhat recovered from the shock of disaster, actually planned a meeting at St. Roch, a district of Quebec. It was known that this meeting was to thank Lord Brougham for his action, and trouble was feared.² Buller applied to Morin as the local leader, and asked him to use his influence so as to secure the calling of a meeting of French in support of the ordinance, or, if that could not be, at any rate to

¹ Vol. II., p. 268.

Cf. Theller, Vol. II., p. 151; and Garneau, Vol. II., p. 468.

prevent the St. Roch meeting from being held ; Morin refused to interfere, and the meeting was held. Happily the presence of a large force of the new Quebec police and of the troops of the line prevented the threatened riot ; but it was clear that if Lord Durham was to remain it could not be at the request of the French.

There was nothing left now but to publish the notice of the disallowance of the ordinance, and to prepare for the return journey.¹ Durham was ill both in mind and in body, for the news brought in by spies of the coming rebellion was disquieting. He had a visit from Sir George Arthur in October, who came to concert measures against the invaders. Arthur, on his return to Toronto, published a proclamation announcing the coming invasion, and stating that spies had betrayed the enemy's plans, and they would find little support in Upper Canada. Nothing but Durham's state of health can account for his action when, in putting forth his proclamation of October 9th, he committed a blunder which deprived him of the sympathy of many in England. It was probably his own composition, and it is the work of a man labouring under a heavy disappointment and the consciousness of an unmerited betrayal. It was described in England as an appeal to the colonists against the Mother Country, and resented accordingly. To take this view simply is to be most unjust to Durham ; it was the necessary defence of a Radical for having committed apparently illiberal actions. If Durham felt himself compelled to break silence at all, he could not have said less, but a man of greater self-control would have expressed it differently.

He first proclaimed the Act of Indemnity and the disallowance of the ordinance, and then addressing "the people of British North America," he said that he did not approve of the secrecy which so frequently surrounded the motives of various acts of State. He could trust the colonists, and after his first proclamation in which

¹ Melbourne's letter (see *ante*, p. 189) seems to have reached Durham on September 29th. Cf. Duncombe, Vol. I., p. 257.

he announced that he had both the will and the power to redress all grievances, he felt himself compelled to explain why he was now returning home. He had accepted the government of British North America with a full knowledge of the difficulties of the post, and he had not shrunk from assuming the "awful responsibility" of powers which were "in the strictest sense of the word despotic." He acted as though the ordinary reign of law in Canada had been abolished, the more readily because men had long ceased to have any respect for or confidence in the administration of justice there.

He had one object in view—to elevate the province into a thoroughly British character, and to win support for the new order of things by the offer of a more extensive enjoyment of free and responsible government, under which men could "merge the petty jealousies of a small community and the odious animosities of origin in the higher feelings of a nobler and more comprehensive nationality."

He felt that to carry out these aims he needed both legal and moral force, and he believed that his commission armed him with all the necessary legal powers, while at the same time he trusted that party feeling in England would for once be stilled in consideration of the importance to the Empire of his success.

"In these just expectations I have been painfully disappointed. From the very commencement of my task, the minutest details of my administration have been exposed to incessant criticism, in a spirit which has evinced an entire ignorance of the state of this country, and of the only mode in which the supremacy of the British Crown can here be upheld and exercised. Those who have in the British Legislature systematically depreciated my powers, and the ministers of the Crown by their tacit acquiescence therein, have produced the effect of making it too clear that my authority is inadequate for the emergency which called it into existence. At length an act of my government, the first and most important, which was

brought under the notice of the authorities at home, has been annulled, and the entire policy of which that act was a small though essential part has thus been defeated."

The disposal of the political prisoners was from the first a matter foreign to his mission. The question ought to have been settled before his arrival; but as his first task was to allay irritation, and as there was no confidence in the ordinary tribunals of justice, he was glad to be able to avoid harsh measures by acting as he had done, since the prisoners had made a confession of guilt.

It is too late now to consider whether this was the only way, but even those who had at first attacked it had come to approve of it, and the views of the Americans were shown by the cessation of their attempts to disturb the Canadas. Even at home the rectitude of his policy was admitted, and the ordinance had only been attacked on technical grounds; if he had not had the power he attempted to exercise, he ought to have had it.

He was quite aware that the section in the ordinance relating to Bermuda was quite inoperative, but the words were inserted to relieve the prisoners of their apprehension as to detention in a convict settlement,¹ and he expected the co-operation of the Imperial Government to render effective his own enactment, as he did not think that it would allow technical errors to invalidate an ordinance so necessary for the peace and good government of British North America.²

This small aid had not been extended to him even for this great object; and the usefulness of his delegated power expired with the loss of that support from the supreme authority which alone could sustain it. His plans were too far-reaching and revolutionary to be carried out with success by weakened hands that had ineffectually

¹ To which it seems Durham had power to commit them.

² In the original this paragraph is an almost *verbatim* copy of the parallel passage in his dispatch of September 28th. Cf. p. 201, *ante*.

essayed but a little more than the ordinary vigour of the police of troubled times.

How could he provide against the immediate effects of the disallowance of the ordinance? He had taken upon himself to punish and had left it to Her Majesty to amnesty. As the ordinance had been disallowed and the proclamation of amnesty confirmed, there remained no obstacle to the return of those prisoners who had confessed their guilt¹; for he refused to re-enact the ordinance under the disguise of an alteration in the scene of banishment, or to place the personal liberty of every man at the mercy of the Government by a needless suspension of the Habeas Corpus merely to exercise the influence of a vague terror over a few individuals.²

“In these painful and conflicting circumstances, it is far better that I should at once and distinctly announce my intention of desisting from the vain attempt to carry my policy and system of administration into effect with such inadequate and restricted means. If the peace of Lower Canada is to be again menaced, it is necessary that the Government should be able to reckon on a more cordial and vigorous support at home than has been accorded to me. No good that may not be expected from any other Government in Lower Canada can be obtained by my continuing to wield extraordinary legal powers of which the moral force and consideration are gone.”

They could easily conceive his disappointment at having to leave the province with his hopes of reforming its crying abuses unfulfilled. He had planned to confer on them municipal institutions, to establish a system of education, to reform the laws relating to commerce and real property,

¹ On October 13th Louis Perrault, one of the fugitives, returned to Quebec.

² This was not written in pique, according to Miss Martineau, but the decision to allow the exiles to return was taken at a Council meeting, with a full knowledge of the charge that would be made. Durham did not wish to make “martyrs” of Nelson & Co. in the eyes of the Americans.

and to introduce a pure and competent administration of justice. Above all he was grieved to be thus forced to abandon the realization of such large and solid schemes of colonisation and improvement as would connect the distant portions of these extensive colonies and lay open the unwrought treasures of the wilderness to the wants of British industry and to the energy of British enterprise.

He had laboured much for these objects and had received the most active, zealous and efficient co-operation from the able and enlightened persons who were associates with him in that great undertaking. Their exertions would not—could not—be thrown away. The information they had acquired, although not as yet fit for the purpose of immediate legislation, would contribute to a juster view of the resources, wants, and interests of the colonies than had as yet prevailed in the Mother Country. To complete and render available those materials for future legislation was an important part of his work as High Commissioner, which he had yet to do.

“ I shall also be prepared at the proper period to suggest the constitution of a form of government for Her Majesty's dominions on this continent, which may restore to the people of Lower Canada all the advantages of a representative system unaccompanied by the evils that have hitherto proceeded from the unnatural conflicts of parties, which may safely supply any deficiencies existing in the Governments of the other colonies, and which may produce throughout British America a state of contented allegiance, founded, as colonial allegiance ever must be, on a sense of obligation to the parent State.”

He fervently hoped that his usefulness to the colonists would not cease when he resigned his various commissions. As a peer in parliament the special knowledge he had acquired would be as useful as it was essential in framing measures affecting the provinces. Too often the legislators were ignorant of the situation for which they were supposed

to be making provision, but he hoped that he would be able to assist in preparing measures which would not only secure their allegiance to the British Crown, but would also save them from the evils to which they were subjected by every change in the fluctuating policy of distant and successive administrations.

This comparatively full account of Lord Durham's final proclamation has been given to provide an opportunity of judging how far it really merits the all but universal condemnation it received in England. So far from being disastrous to the Imperial interest it was beneficial, for it prevented the British in their despair from refusing to trust any longer to the Imperial Government. Moreover, by definitely declaring, as it does, against the legislative union of the two Canadas, it secured the neutrality of Lafontaine's party in the coming struggle. The constructive part of the proclamation is very interesting, especially in view of the modifications which are to be seen in the Report itself. All that can be said against Durham's reference to the treatment he received from Melbourne and Brougham, apart from the question of taste, is that it was calculated to render more difficult the task of his successor. However, the justness of Durham's complaint cannot be disputed, and as a matter of fact it did not increase the difficulties of Poulett Thompson's work; both British and French were so jealous of each other that they allowed the strong man to do as he pleased, especially when he came backed by Durham's approval.

Colborne had been requested by Glenelg to remain in Canada by a note addressed to him on the same day as he sent off his first announcement to Durham of the proceedings in parliament.¹ It was fortunate for the Empire that Colborne did remain and that Durham was patriot enough to transfer all real authority into his hands, as Gosford had done in 1837. Information as to the coming

¹ The Commission appointing him Durham's successor appeared in the Gazette of December 14th.

outbreak grew more and more definite. Men were seen drilling not far from Quebec and Montreal, and the British newspapers teemed with rumours of preparations on the part of the French; before Durham left an iron nine-pounder gun was captured in a French peasant's cart at Moore's Corner, close to the American frontier.¹ Arthur had brought the news which he had derived from his spies as to the preparations of the Hunter Lodges, and it was decided that Durham should leave Quebec about October 20th and return to England by way of Washington. He was very popular in the United States, and he hoped by his intervention to be able to support Fox, the British representative, and to prevail upon President Van Buren to calm the excitement among the frontier population. That this visit to Washington was not abandoned on account of the threats of the Hunter Lodges scarcely requires assertion. Durham decided to return to England direct because the danger of a general outbreak in Lower Canada was threatening, and because the British of Upper Canada as well as those of Lower Canada were displaying little eagerness to defend the Government. Indeed, so early as September 11th *The Montreal Herald* had demanded justice on the rebels, or, as an alternative, peaceful separation from the Mother Country, and at a later date it decisively declared against federation, stating that if the Imperial Government enforced it, rebellion would ensue; if it were brought about voluntarily, there would be endless bickerings between the members. It is clear from Durham's proclamation of October 9th that he still had hopes of being able to carry the necessary measures through the Imperial Parliament, and he probably thought that the sooner he settled the question between himself and the ministry the better it would be for the colonists.

Although he had determined to resign, he was not forgetful of his duties. In one despatch to Glenelg he

¹ Bonnycastle: "Canada as it Was," Vol. II., p. 144.

brought forward the case of the American squatters in the Eastern Townships and advised that their claims should be recognised; in another he pleads for Colborne's troops, out of whose scanty pay deductions were being made to cover the cost of the extra garments which were needed in the cold Canadian winter. On October 20th¹ Theller and Dodge, two of the American prisoners, escaped from Quebec aided by sympathisers among the French inhabitants; it was a sign of the increasing boldness of the discontented. On the 20th Wakefield and Captain Dillon, one of the aides-de-camp, left for England, *viâ* New York, bearing the news of Durham's approaching return without permission. On the 29th, at the old château, a farewell dinner was given to Durham, by the Guards, under Sir James Macdonnell. About a hundred sat down, and the greatest unanimity prevailed. As the wine circulated, speeches were made most flattering to Durham, but scarcely consonant with military discipline. Durham in reply insisted that the most cordial understanding had always existed between himself and Sir John Colborne; he had perfect confidence in him, both as a civil and as a military administrator. He would have been glad to remain in Canada to serve as a volunteer under Sir John did he not think he could do more good in the Imperial Parliament. On the 30th Durham was unwell again; perhaps the news Colborne brought that day from Montreal may account for it.

On Thursday, November 1st, Durham embarked on the *Inconstant* frigate, the only one available. Snow had fallen heavily the night before and it was bitterly cold. Despite this,² 3,000 of the most respectable inhabitants of Quebec accompanied him to the ship, including the societies of St. George, St. Andrew, and St. Patrick.

¹ See Theller: "Canada in 1837-38"; and Carrier: "Les Événements de 1837-38."

² Garnett: "Life of E. G. Wakefield," p. 173; and "Slingsby Duncombe," Vol. I., p. 265.

Durham rode down from the Castle, between two lines of Guards; Lady Durham was in an open carriage, and there were also present Sir John Colborne and Sir James Macdonnell. Amid the cheers of the crowd and the thunder of guns from the city, the citadel, and the fleet, the *Inconstant* got under way at half-past four. She was towed by the *Canada* and the *Lumber-Merchant* steamer to St. Patrick's Hole, about six miles down stream from Quebec. The British desired to accompany as far as possible the Governor upon whom all their hopes now rested. Duncombe tells us how they did not forbear to express their fears that long before the *Inconstant* reached Plymouth, they would be struggling for their lives. It is perhaps significant of Durham's change of feeling that one of his last acts was to appoint Sir James Stuart, Chief Justice of Quebec.¹

The French held sullenly aloof from the pageant, as they had from the previous meetings in Durham's favour. They scarcely knew whether they were glad he had gone, but for the majority of them, at least, the future held no hope. Only a few enthusiasts and hot-heads believed in the possibility of Nelson's success against the veteran Colborne. In Upper Canada men's feelings were divided. A few shared Draper's belief that Lord Durham would view the situation in Upper Canada as a statesman and not as a Radical politician; but the majority were indifferent to everything. While at sea, on November 10th, Durham wrote a dispatch to Glenelg with the news that the militia of Upper Canada were showing little inclination to volunteer for the defence of a province which they believed would be surrendered to the United States in the near future. Durham insisted that there was no intention of abandoning the colonists, and his assurance was accepted by many. Others, who had little love for the ruling powers, refused to accept deliverance from the Hunter

¹ Stuart had been one of the officials attacked by the Pa ineauists, and he had been suspended from office.

Lodges, and Arthur, thanks to his spies, had little difficulty in beating the invaders in detail.

While Durham had been making the final arrangements for his departure, Colborne had taken steps to nip in the bud the efforts of Nelson. Early in October a letter was sent to *The Morning Chronicle*¹ from Quebec, in which it was announced that the Hunters could count on 40,000 men for the invasion of Canada. Durham himself, in a dispatch dated October 20th, informed Glenelg of the imminence of the rising, and it was not known then that the French could count on no support from the Hunters. Another letter from St. John's, in the heart of the Richelieu district, dated October 11th, told of the visible preparations of the Canadians and of the terror of the English at Odelltown and La Colle. The province was divided into military districts, and the officers in command were so watchful that it was all but impossible to concert plans for a rising. On October 15th Colborne sent the 1st Dragoon Guards under Colonel Cathcart to garrison Chambly. By this movement he hoped to overawe the troublesome "six counties." All leave to officers was stopped, and the supernumeraries were forbidden to leave Canada. Colborne informed the United States Government of the movements of the Hunter Lodges, and he sent the men-of-war in the river for all the troops which were available at the American stations. Notice was given that volunteers would be called out immediately and Martial Law proclaimed on the first symptom of disaffection.

Colborne's precautions were none too many for the occasion. Scarcely had Durham left the St. Lawrence than Dr. Robert Nelson and his friends began to move. At the head of 4,000 habitants, they seized a little place called Napierville, while a second party attacked the house of a Mr. Brown at Beauharnois and captured young Ellice, Durham's ex-secretary, and several of his friends. The loyalists at La Prairie got ten minutes' notice to leave the

¹ See issue of November 21st, 1838.

village. What the new rising aimed at seems from Nelson's proclamations to have been a French Canadian peasant-republic, but it never had any chance of success. The attack had been planned to take place at Montreal on the Sunday, when it was expected that all the troops would be at church and without arms. Colborne's vigilance had made this impossible, and as there was no further time to devise a satisfactory plan, the rebels were beaten in detail; one party of them, indeed, were captured and delivered up by a body of loyalist Iroquois, from whom they had attempted to obtain arms.

Immediately he got wind of the rebellion Colborne called out the volunteers and declared Martial Law. The volunteers made a series of domiciliary visits to search for arms, and all outlets from the city were closed. It was remarked that few men were to be found, but L. M. Viger, President of the People's Bank, D. B. Viger, one of Papineau's agents in England and an ex-Legislative Councillor, together with others of less note, were arrested. The volunteers were ruthless, and determined that the question as to who should rule in Lower Canada should this time be settled once and for all.

Colborne had arrived at Montreal on the 4th of November, and issued a proclamation against the Patriots, but before he could set his troops in motion, the rising gave signs of collapsing. Although a large number of the habitants were out between the 3rd and the 6th, they could find no arms at the depôts to which they were directed, and as the weather was bad they began to return home in disgust. The affair was no better managed than in the preceding winter, but Colborne took no risks. He ordered the corps under Macdonnell and Clitherow to march to L'Acadie and St. John's so as to be ready to attack Napierville on the 9th. Nelson heard of this, and as the roads were bad, succeeded in evacuating the place a few hours before the troops entered it on the morning of the 10th. Nelson's only plan was to wait for a more

favourable opportunity, and he had to fight for his retreat. The loyalists of the neighbourhood, appeased by Durham's politic recognition of the rights of the squatters, had resisted all Nelson's efforts to secure arms and ammunition from across the frontier. Led by Colonel Naylor, whom Colborne had sent to inform them of his plans, the loyalists threw themselves into the church at Odelltown, and after attacking them with nine hundred men on his retreat from Napierville, Nelson himself retired across the frontier beaten.

The event in Beauharnois was not dissimilar. The regular troops of the 71st Regiment and the Glengarry Highland Militia had little difficulty in scattering the half-armed peasantry. Young Ellice and his friends, who had been well treated, were released by their captors in a hurry to escape, and by the 15th the remnant of the rebels had surrendered. For the second time the French had appealed to the sword and had been vanquished. On the 14th and 15th the prisoners from La Prairie and Odelltown were brought to Montreal. Of one of them, La Martine, a French officer who had been captured at Odelltown, *The Montreal Herald* of November 15th said, "He deserves the death of a brigand, and we trust he will meet it." The actions of the volunteers were not less ruthless than their words. They are best described by the following quotation from *The Montreal Herald* of November 13th: "On Sunday evening the whole of the back country about La Prairie presented the awful spectacle of one vast sheet of lurid flame, and it is reported that not a single house has been left standing. God only knows what is to become of the surviving Canadians and their wives and families during the approaching winter, as nothing but starvation from hunger stares them in the face. It is melancholy to reflect on such awful consequences of rebellion and the irretrievable ruin of so many human beings, whether innocent or guilty. Still, the supremacy of the laws must be maintained inviolate, the integrity of the Empire must

be asserted, peace and prosperity must be secured to British subjects, even at the expense of the entire 'Nation Canadienne.' . . . The history of the past proves that nothing but sweeping them from the earth and laying their habitations in the dust will prevent renewed rebellions south of the St. Lawrence or renewed invasions from the Americans."

By November 12th Colborne could announce to Buchanan, the British Consul at New York, that the rebellion was put down, and by November 18th the arrival of the 11th and 65th Regiments at Quebec had made the cause of the rebels hopeless. By virtue of an ordinance passed by his special Council, Colborne erected a tribunal for trying the prisoners.¹ Some were hanged, and others transported to the Australian penal settlements. Encouraged by the disavowal of Durham's ordinance, Elzéar Bedard, now judge at Three Rivers, granted a *habeas corpus* writ to test the question of the legality of Colborne's acts, but the old soldier simply suspended Bedard from office, and the French sullenly acquiesced. The presence of the military and the zeal of the volunteers prevented any further attempts at insurrection in Lower Canada.

It is not strictly correct to speak of a second rebellion in connection with Upper Canada; the only hostilities there were the work of American brigands sent by the Hunters. Arthur was quite aware of the plans of the latter, and was taking measures to complete the embodiment of 13,000 militia for eighteen months, when a force of about 500 of the Patriot troops, mostly Americans, some mere boys, managed to land near Prescott, a Canadian town opposite to Ogdensburgh, from which they had sailed. There was a miniature naval battle between the Patriot steamer *United States* and the small Government armed steamer *Experiment*, and this was followed by a skirmish on shore between the Patriots and a force of regulars and militia.

¹ See L. O. David: "Les Patriotes de 1837-38."

The latter forced their opponents into some stone buildings outside the town, while at the same time a second force under Captain Sandom, of the Royal Navy, prevented help being sent from the American side. The Patriots crossed on November 12th, and held their posts till the 16th; no help came from Upper Canada, much to their surprise, and on the 16th Colonel Dundas arrived at Prescott with four companies of the 83rd Regiment and some artillery. After a fierce bombardment the first stronghold was stormed, and those of the defenders who were not captured were glad to escape back across the river. The people who held the second extemporised fort—a wind-mill—thereupon surrendered. Eighty-seven unwounded and sixteen wounded prisoners were taken, together with three pieces of artillery and some small arms. The Government troops lost forty-five killed and wounded.

There was great excitement on the American frontier at this defeat, for the Canadians were arming, and reprisals were feared. Petitions were sent from the American cities, asking for mercy on the misguided men who had been deceived as to the true state of feeling in Upper Canada. Van Buren, the President, issued a proclamation of warning on November 21st, in which he stated that those who interfered in Upper Canada must not expect support. On November 24th a Court Martial was opened at Kingston for the trial of the prisoners. This time there was no hope of mercy, for men of all opinions in Upper Canada condemned the attack on Prescott. Three men were hanged besides the leader, a Pole named Von Schultz. He is variously described as a mere adventurer and a pathetic hero who was deceived by others. A curious rumour was mentioned by *The Spectator* that the "hero" was merely a spy in the service of the Czar of Russia, and it is a fact that soon afterwards the Russian Consul at Boston was arrested by the authorities of Lower Canada.

Unwilling to give up their plans, the Hunters dis-

patched a second force, which landed near Sandwich, in the extreme west of Upper Canada, on December 4th. They burned the *Thames* steamboat, set fire to the barracks, and thereby caused two militiamen to be burnt alive; after committing sundry murders, and in one case—that of a military surgeon, Dr. Hume—mutilating the body, they offered the feeblest possible resistance to a body of militia under Colonel Prince. The militia lost two killed and two wounded, while of the invaders twenty-six were slain and twenty-five captured. The Canadians had been stung into a desire to punish so wanton an attack. Five of the prisoners shared the fate of Von Schoultz, for no plea of ignorance could be urged in their favour. When the news was carried to the Maritime Provinces, votes of men and money were made to repel the invaders. Arthur had no trouble with the reformers of Upper Canada, while at the same time he had the enthusiastic support of the loyalists and Tories, and it is interesting to notice that a loyal address was presented to him by those few French Canadians who were at that time living in the upper province.

Following Head's example, Arthur summoned the Assembly to meet. The Assembly and the Council, so far from being, as was said, both Tory, quarrelled incessantly, and the latter negatived many of the former's measures. The question of the clergy reserves again caused disagreement, and when Lord Durham's Report was issued in February, 1838, its proposals were vigorously debated. The proposed union of the Canadas was adversely canvassed in the Assembly, but the scheme to send a commissioner to England on the subject was opposed by the Council. A committee of the Assembly drew up, under Hagerman's direction, a vigorous attack on the Report, but this in turn was attacked as vigorously by Francis Hincks, then editor of *The Examiner*, in a pamphlet. Several members of the House characterised the Report as "full of inaccuracies, mis-statements, and even

positive falsehoods." After much debate the Assembly adopted an address to the Queen. The tone was loyal, but they made it quite clear that the old system of colonial administration must end. On May 11th Arthur prorogued the Assembly. Two of its Acts are worthy of mention: the first authorised the Government to dispose of its stocks in the Bank of Upper Canada, the second enabled the Government to buy out the private shareholders of the Welland Canal, giving them in payment debentures redeemable in twenty years at a graduated rate of yearly interest. Although the banks of Upper Canada resumed specie payments on August 1st, the colony was actually bankrupt, and owed an enormous debt to Barings. This must be remembered when seeking a cause for its final acceptance of Poulett Thompson's scheme.

CHAPTER XV.

LORD DURHAM'S RECEPTION IN ENGLAND.

ALTHOUGH Melbourne, in his letter to Durham announcing the disallowance of the ordinance, professed to believe that it would only encourage the High Commissioner to stick to his task the more, he really held a very different opinion. Writing to Lord John Russell on August 25th, he said: "Durham will either throw up at once, or he will hurry his measures very much, which indeed he was otherwise inclined to do, and then insist upon coming home immediately. He will concoct a general arrangement by the end of October, send it home, follow it himself, boast of the effect he produced while there, and, if it is thrown out, will afterwards say it is all owing to the manner in which he has been treated—in saying which he will have a good deal of colour, if not of truth."¹ This was certainly a remarkably correct anticipation of how Lord Durham did act, if one looked at his resignation from Melbourne's point of view. Nothing, however, could be more unfair. Durham did not resign in a fit of pique, but because he realized, quite correctly, that he could be of no more use in Canada. His authority had been slowly undermined in the eyes of the French by the repeated attacks upon him in parliament. On account of these attacks Lafontaine listened to Roebuck and refused to make terms with Durham. Had the latter remained in Canada, he would only have hampered Colborne during the struggle which both clearly foresaw, while he certainly was of the greatest use to Poulett Thompson and the Government in England.

The people of England, as a rule, sympathised with

¹ Sanders, p. 432.

Durham during the whole of August, and in fact until the news of the final proclamation of October 9th came in November. The newspapers of every shade of opinion attacked the Government more or less openly for betraying Durham. *The Morning Chronicle* was furious, and even *The Times*, although supporting Brougham's interpretations of the ordinance, attacked the ministry for their conduct in language curiously like that of *The Montreal Gazette*: "True to their base and selfish instincts, the time-serving Whigs, in deference to whom the noble Earl had at great personal sacrifice placed himself in the van of their Canadian conflict, have at the first shot deserted, dishonoured, and dismissed him. It is in vain to pretend that their conduct towards Lord Durham has been otherwise than we have now described it; nor on learning the public affront which they have now put upon him by advising Her Majesty to disallow his proceedings, is it possible that his lordship can retain their commission for a single day; unless, indeed, that proud and sensitive spirit, heretofore reported as the very model of sensitive honour, shall now be so abased by contumely as to submit ignominiously to those freedoms with his character and coronet which formerly he would have perilled his life to resent."¹

Allowance must be made for party feelings, but even so the view of *The Times* expressed that taken by the ordinary man. Melbourne, however, had no wish for Durham's resignation, and would have been pleased had he found it possible to remain in Canada. That Durham's private correspondence bore out this hope seems evident.² On October 18th the dispatches of September 26th and 28th reached Melbourne at Windsor. Both he and Spring Rice, the Chancellor of the Exchequer, recognised the ability with which the Governor-General presented his case. Melbourne met Glenelg and Rice in London at once, and at a Cabinet meeting on the 19th the situation

¹ Leading article for August 28th, 1838.

² Torrens, Vol. II., p. 268.

was talked over. The dispatches were compared with the tone of Durham's private letters, and Glenelg, probably assisted by the others, drew up an answer to Durham's defence. Lansdowne had written on October 18th to Lord Melbourne on receiving the news. He was one of the few men who had ventured to defend Durham, and he now advised that no step should be taken until they heard from Durham again. "What wounded vanity had done, gratified vanity might undo, and he should not consider it quite off the cards that the address of the inhabitants, if generally signed and urgently pressed, might induce him so far to reconsider his determination as to delay at all events his departure till he heard from England." Glenelg and Melbourne both had unbounded confidence in Lansdowne's sagacity, and the despatch to Durham was drawn up on the expectation that only sufficient pressure was needed. Glenelg admitted that the Earl had cause for complaint, but entreated him on public grounds to reconsider his decision.

Meanwhile an intrigue to oust Glenelg from his post was going on within the Cabinet. The Colonial Secretary was obviously too weak a man for his post, and his health was severely strained by the death of his brother, Sir Robert Grant. Other rearrangements of portfolios were also discussed to strengthen the ministry, but it was as difficult to secure the resignation of the discarded officials as it was to satisfy the demands of would-be successors. On October 18th Russell advised that Glenelg should be asked to accept the office of Auditor of the Exchequer, a rich but uninfluential post for which his unimpeachable integrity and his scanty means both fitted him. Melbourne agreed to this proposal, but it was necessary to secure Glenelg's consent, and he shrank from broaching the subject so soon after the death of the Colonial Secretary's brother. Melbourne's momentary sympathy with Durham, however, was passing away, for he found he would have less difficulty than he thought in filling his place. He had

directed Glenelg to have Durham's dispatches copied as quickly as possible so that they could be fairly considered, and not only had Colborne written to accept the temporary command in Canada, but offers had also come from the Marquis of Normanby, Lord-Lieutenant of Ireland, and from several others, to undertake Durham's post. Normanby and Morpeth, the Irish Secretary, did not agree, and Russell wished to see Morpeth in the Cabinet. To remove both together seemed an admirable plan, especially as Normanby had won golden opinions in Ireland, and it was felt that the whole policy hitherto pursued towards Canada must be altered.

Melbourne had carefully perused the dispatch of September 28th, and it was become common property that Durham's private letters laid the major portion of the blame on the Prime Minister. Writing to Russell on October 21st, he professes himself "unable to understand the terror that Durham inspires. Everybody has always been afraid of him. They seemed to him to fear him more than Brougham." It was arranged that Glenelg should draw up a fresh dispatch to Durham, the tone of which was influenced by Normanby and Morpeth. The latter hoped that there "would be no truckling to Durham;"¹ and Melbourne in a letter to Russell on October 26th said: "Now Durham has so run at me in those letters of his and I dislike him so much that there is no course would please me so well as setting him at defiance; but when I consider the state of the colony, and the feeling of the English party now rallying round him, and when I recollect that I am accused of not having supported him, I feel it to be absolutely necessary that we should do nothing to prevent his returning or to facilitate his coming away. If we were merely to accept his resignation and appoint a successor it would be said, 'This was your intention from the beginning, and all you have done has been in order to carry it into effect.'"² This well describes Melbourne's position;

¹ Sanders, p. 434.

² *Ibid.*, p. 435.

he would like to humble Durham, while at the same time he feared to increase his own already great unpopularity by recalling him, and therefore he adopted his favourite plan and did nothing.

Although Melbourne gave way to personal feelings, Russell was more of a statesman. He had seen Glenelg's dispatch, which he described as "mere verbiage, proposing nothing, asking nothing, deciding nothing," but only leaving the question of Durham's retirement in some manner open. He valued Durham more justly than Melbourne did, and as the High Commissioner's information as to a possible renewal of the rebellion tallied with that sent from Fox, the British minister at Washington, Russell wished parliament to meet before Christmas. It is clear from Russell's letter to Melbourne of October 22nd that he was under no illusions as to the power of the ministry.¹ The House must meet because Durham's dispatch plainly declared that he could not accept the construction put upon the Suspending Act by the ministers. He refused to exercise the powers they professed to assign to him in the face of a possible second attack. Durham and the ministry, as Russell saw, might ignore the Opposition, but the ministry alone could not. Russell's plan was to pass an Act definitely stating that the Governor of Canada should or should not, with his Council, have power to pass laws for keeping suspected persons in custody, and for bringing before an impartial tribunal traitors or murderers. If parliament gave this power, the mischief of Brougham's Bill would be repaired. If they did not, they would be responsible for the consequences. On the next day, the 25th, Russell sent Melbourne the emendations he proposed in Glenelg's dispatch, and at the same time gave Melbourne the choice between forwarding to Durham a paper which he had drawn up, or of calling a Cabinet to consider the question of assembling parliament; otherwise he, Russell, would be compelled to resign. Russell's plan for placing Brougham

¹ Walpole's "Life of Lord John Russell," Vol. I., p. 309.

and the Tories on the horns of a dilemma was highly ingenious, but the proclamation of October 9th had already placed a gulf between Durham and the ministry. On October 12th Durham wrote to Russell: "I do not conceal from you that my feelings have been deeply wounded by the conduct of the ministry. From you, however, and you alone of them all, have I received any cordial support personally; and I feel, as I have told you in a former letter, very grateful to you." This letter reached Russell as he was considering the best way to emendate Glenelg's dispatch. He was placed in an unpleasant position; he had to choose between the claims of friendship and the tie of loyalty to his party chief. On October 25th he wrote to Melbourne that he had received Durham's letter and had answered it, "merely saying that if I had been in the Lords I should have done no better than my colleagues there." Durham understood and respected Russell's motives in writing thus, but it did not calm his resentment against Melbourne. The latter's power was obviously declining, and there is a probability, amounting almost to a certainty that Durham was kept informed by his friends in London of Melbourne's real opinion about him.

Glenelg's dispatch, as amended by Russell, never reached Durham in Canada, for he had already sailed. It professed surprise at Durham's statement of his knowledge that the section of the ordinance relating to Bermuda would be inoperative. It was pointed out that he had not informed the Government of this before, and that he had sent the prisoners to Bermuda at once so that it had been impossible for the Government to suggest legislation to the Bermuda authorities. The propriety of proposing a measure to the Imperial Parliament to supply the defects of the ordinance had been considered, but Lord Durham would not expect to find in a dispatch the reasons which induced Her Majesty's Government, after full deliberation, to think such a course inexpedient. The dispatch was a desperate attempt to "save the face" of the ministry without

absolutely breaking with Durham. In the meantime the serious illness and death of Lord John Russell's wife secured Glenelg himself a further lease of office.

As yet no one could decide how Durham would act. Melbourne's letter to Poulett Thompson, the head of the Board of Trade, on October 30th, proves that he, however, did not look with equanimity on either of the possible courses open to the High Commissioner. The letter is in reply to one from his subordinate informing him of the state of feeling which prevailed.¹ The Prime Minister admitted that Durham had received great provocation, although he had brought it on himself by his rash and imprudent manner of doing things in themselves right, and it required much patience and forbearance to submit to it. Melbourne attempts to defend the action of the ministry by saying that if they took steps to hasten Durham's return he would put down any failures that resulted to his recall, although he would not have allowed this recall to have interfered with his plans. Their request that he should reconsider his determination was the best course under the circumstances. He had the British party on his side now, although they were formerly discontented. It was not really submission to his insolence, but it was saying in effect, "You have put yourself into a foolish passion and acted rashly; do think better of it and retract your declaration." Melbourne did not fail to see that if Durham did remain, it "would be liable to the observation that he was there, Governor of the Canadas, rather by the direction of the Canadians than by the appointment of the Queen," but that was not sufficient to counterbalance other considerations. Melbourne also touches on the affair of Turton and the "absolution" which Durham had sent to Lord John Russell, but these were soon to be unimportant.² Another of the men Durham had relied on wrote to Melbourne about this time disparaging the High Commissioner's rule in Canada and encouraging Melbourne to

¹ Sanders, p. 436.

² Sanders, p. 437.

flout him. This was Edward Ellice, "the Bear," Canadian fur trader and English M.P. His son had resigned his post as Durham's private secretary before the Governor left for England. He was a party in himself in Canada, and seems to have half-heartedly supported the legislative union in theory, but to have objected to the federation scheme. Roebuck hints that Ellice's pet scheme was that of Head, the annexation of the Montreal district, including the seigneurie of Beauharnois, to Upper Canada.¹ Such a scheme was too unfair for Durham ever to accept it.

On November 3rd Roebuck published the first of his three attacks on Lord Durham in *The Spectator*; on the 10th and on the 17th other articles appeared. Where Roebuck made charges they were as regards the facts generally true enough, but every act of the High Commissioner was misrepresented in a way no one but Roebuck was able to misrepresent it. Melbourne was always lucky, and at this moment, immediately after² the appearance of Roebuck's first letter, came the news of the proclamation of October 9th. The tide of sympathy with Durham had been steadily rising, but this checked it, and few of the newspapers ventured to defend Durham. *The Times* was delighted and attacked Durham without mercy. It nicknamed him the "Lord High Seditious," and many of the ministerial papers followed its lead. Melbourne's good fortune did not end here, for Lord Brougham and he became more friendly, and Roebuck, who had at this time frequent interviews with Brougham, met Melbourne also. After his proclamation ministers thought they dare deal strongly with Durham. A Cabinet Council was held, and as a result, on November 15th, Glenelg sent off the following dispatch, one of the sternest ever sent by a British Government to a representative abroad.

"The proclamation of October 9th Her Majesty's confidential advisers regard not merely as a deviation from

¹ *The Spectator*, 1838, p. 1085.

² Actually on November 5th, by the *Royal William*.

the course which has been invariably pursued by the Governors of British possessions abroad, but as a dangerous departure from the practice and principles of the Constitution. They consider as open to most serious objection an appeal by such an officer to the public at large from measures adopted by the Sovereign, with the advice and consent of parliament.

“The terms in which that appeal has, in this instance, been made appear to Her Majesty’s ministers calculated to impair the reverence to the royal authority in the colony, to derogate from the character of the Imperial Legislature, to excite among the disaffected hopes of impunity, and to enhance the difficulties with which your lordship’s successor will have to contend.

“The ministers of the Crown having humbly submitted this opinion to the Queen, it is my duty to inform you that I have received Her Majesty’s commands to signify to your lordship Her Majesty’s disapprobation of your proclamation of October 9th.”

The ministry had thrown down the gage, but they were none too confident of the issue, although Roebuck and Brougham were useful auxiliaries. On November 1st Lady Russell died, and Lord John wished to resign his post; the ministry was already tottering, and strong pressure alone could persuade Russell to remain. Trouble was feared in Canada, and on November 7th *The Morning Chronicle* announced that, according to private letters, the habitants, once so confiding and devoted to the English, were now preparing to renew the struggle and to let it go on to its termination. It was a contest of races, Englishmen against Frenchmen, not royalist against rebel or Republican. “Nothing now can bring about a settlement but such a course of events as shall determine whether English or French blood shall rule. The contest which has been provoked by the sword must be settled by that weapon or by superior force.” On November 20th Wakefield and Captain Dillon arrived at Liverpool with

the news that Durham proposed to sail on November 1st. They had had a most adventurous voyage and had only landed on the Irish coast by the help of a fishing boat.

Meanwhile Durham's friends were not idle. John Stuart Mill was a warm admirer of the High Commissioner, and wrote an eloquent article taking "the highest ground and claiming for Durham not mere acquittal but praise and honour."¹ He had followed Durham's career with interest from the beginning, and did not think him the "defeated and discredited man" he seemed to be. The article appeared in the December number of *The Westminster Review*, but advance sheets were sent to the various journals, and *The Spectator*, no friend to Melbourne, published large portions of the article in its issue of November 24th.² Mill's article was more than eloquent; it was one of the adroitest manifestoes ever issued on behalf of a popular leader. He pointed out that Durham in dealing with the rebels had to reckon up the two forces of sympathy with them in America and hostility to them among the loyalists and in England; to hold Canada for the British he had to smooth over the racial problem, and restore representative government. To this end all his measures were directed, even the ordinance, which was in many ways defensible. Men blamed the proclamation of October 9th as inflammatory, but feeling was already running too high in the colony to be affected by it, and there was very little of complaint in the ordinance; it was really the necessary explanation to the colonists of Lord Durham's reasons for retirement, and was no appeal to the people, but an answer to the various addresses which had been presented asking him to remain. Had Lord Durham wished to gratify personal feelings, private communications would have sufficed, but he was the only British politician

¹ Mill's Autobiography, p. 216.

² The same number also contained a letter from Wakefield denying that his mission to Papineau had been from Durham, as Roebuck alleged.

who was not convicted of having blundered in the affairs of Canada, and he wished to assure the Canadians that he had not abandoned them. As he was debarred from leaving healing measures behind him, he would leave healing principles. By his proclamation he had detached the British from the official clique, while at the same time he had announced, without opposition being made, that justice should be done to the French Canadians ; they had accepted Durham's policy of conciliation, not coercion.

The peroration is worthy of quotation : " He has been thwarted, but he has not failed. He has shown how Canada ought to be governed, and if anything can allay her dissensions, and again attach her to the Mother Country this will. He has at the critical moment taken the initiative of a healing policy. He has disposed of the great immediate embarrassment—the political offenders. He has shown to the well-intentioned of both sides an honourable basis on which they may accommodate their differences. He has detached from the unreasonable of one party their chief support—the sympathy of the United States, and it is reserved for him to detach from the unreasonable of the other the sympathy of the people of England. He comes home master of the details of those abuses which he has recognised as the original cause of the disaffection, prepared to expose these as they have never before been exposed, and to submit to Parliament, after the most comprehensive inquiry that has ever taken place, the system on which the North American colonies may be preserved and well governed hereafter."

The effect of this defence was very great ; men who now saw on what lines Durham could be defended rushed in to help. Wakefield was in London, and we can perhaps trace to his influence some of the positive enthusiasm for Durham which began to show itself. The Radicals were without a recognised leader and turned their thoughts to him. There was a sort of Durham party already in existence, and though *The Times* as well as the ministerial

organs affected to despise the movement, it gathered strength. *The Globe* was especially bitter in its attacks. The ministers had good reason to fear Durham now; in Ireland O'Connell was gathering recruits for his "Precursor Society," and in England the democrats were troublesome. Richard Oastler was agitating in the north against the new Poor Law, and in August the Chartists had adopted the "six points" of the "People's Charter" at Birmingham. The "physical force" men were extremely prominent, and threats to march on London were heard. Scarcely had Wakefield's tidings as to Durham's approach been grasped when the news came that Durham himself had arrived.

On November 27th the *Inconstant* arrived off England, after a somewhat exciting voyage. For four days it was impossible to land on account of the heavy seas, but on the 30th the party reached Devonport in the Admiral's barge. There was no official reception (that was part of Durham's punishment), but he was enthusiastically greeted by a meeting of the Devonport Liberals, which Molesworth had organized for December 1st. The Town Hall was filled by a crowd of 1,500 people, and an address was presented to Lord Durham by the mayor. He made a short speech thanking them for their address; it contained two remarkable passages:—

"You will never have reason to regret the confidence you have this day placed in me, or the declaration that you have made of your approbation of my government in British North America.

"So far as it seemed to me imperatively necessary, in order to allay the most alarming irritation and excitement in the Canadas, and to lead men's minds from the contemplation of present evils to the prospect of future remedies, I have already explained the nature and scope of the policy which I pursued as Governor-General. Upon that subject I shall, when parliament meets, be prepared to make a representation of facts wholly unknown here, and disclosures of which

the parliament and people of this country have no conception; and I shall then fearlessly demand from the assembled Legislature that justice which neither they nor the people of England ever will deny to a public servant who has faithfully and honestly discharged the duties assigned to him."

Durham had not yet received the dispatch of November 15th, but the intentions of the ministry were well known, and it seems probable that before the meeting a plan of campaign was agreed on between Durham and Molesworth. At any rate, the very evening he returned from the meeting, if not before, Molesworth despatched a letter to his constituents at Leeds; in it he announced his confidence in Lord Durham, and his belief that he was the fittest man to advise on the settlement of British North America. "Let Leeds follow the example of Devonport in acclaiming Lord Durham, and in support of the man who not only champions the sound policy of 'Ships, Colonies, and Commerce,' but is also in favour of an improvement in the representative system." The Radicals understood that Lord Durham was no longer coy, and on December 7th a meeting was held of the Westminster Reform Association at which it was decided to call a special meeting to discuss the propriety of presenting an address to the Earl of Durham. Durham was in no hurry to reach London; he was agreeably surprised at the warmth of his reception, which he is said to have ascribed to Mill's article, and agreed to receive addresses at several places on his way to London. At Devonport he received a deputation from Plymouth with an address. In his answer he claimed to have "effaced the remains of a disastrous rebellion," and to have "conciliated the esteem of a great and powerful nation." Fate played him an unkind trick, for even as he spoke the news was known of the outbreak of the second rebellion, and on the 3rd came the news of its suppression.

At Totnes, Exeter, Ashburton, and Honiton addresses were presented. At Exeter he was tempted to reply that

the very renewal of the rebellion showed how the best interests of the Empire were affected by proceedings founded on party feeling and political animosity. Some thought this not consistent with his former words, but the inconsistency is not so real as apparent ; it is true that the habitants had been preparing since June, but they would never have taken the decisive steps had they not thought that Durham was powerless. Perhaps Durham's slow journey was intentional ; he wished to give popular feeling a chance to declare itself, and in the south of England, at any rate, he had no cause for complaint.

When Melbourne heard of Durham's arrival, he remained in London, expecting that the Governor would come post haste to town and storm the position. He grew uneasy when he heard what Durham really was doing, and in his letter to Russell admitted that the departure of the High Commissioner and the immediate outbreak of the rebellion synchronised somewhat awkwardly. He said he did not wish to press upon Durham, and would do anything short of "court and truckle."¹ He had soon changed his views, and his alarm did not decrease when Durham on his arrival forbore to call on the ministers. On December 8th Lord Stanley of Alderley, party whip and Secretary to the Treasury, called upon Durham. The latter had by this time heard of the dispatch of November 15th, and, according to Melbourne's version, informed Stanley that he should write a reply to it announcing that when he received from North America the whole of the information which he had left Charles Buller to collect and digest he should lay it before the Government. Durham seemed much hurt at the last dispatch, but was "otherwise calm and quiet enough." However, he expressed no animosity or resentment against anyone, but he said he thought the Government had acted towards him with ill will, and that he had been made an object of persecution. Greville's account shows Durham in a more fighting mood, for, referring to

¹ Sanders, p. 440.

the articles in *The Globe*, he said that as the ministers had attacked him he must defend himself.

True to his promise to Stanley, Durham sent in a dispatch to Glenelg, announcing his resignation, and informing him that the Report and minutes of evidence should be handed in when Buller arrived, who was to leave Canada on November 20th. Soon afterwards Lady Durham resigned her appointment at Court; it seemed as though Durham wished to break entirely with the ministry. Perhaps his hostility was not decreased by the attitude of the Whig journals. Rumours that the Queen had been instructed to treat him with marked coldness were flying about, and as the ministers made no sign of wishing for a reconciliation, Durham maintained his reserve. The ministers were, on their part, waiting for Durham to take the first step, for already on the 7th, the day before he reached London, they had met and jointly drawn up a letter to him "in very moderate and proper terms," and were waiting for a fitting opportunity of sending it. As before, Melbourne did not lack advisers, and his attitude towards Durham depended on the latest influence to which he had been exposed. On the 4th he had been willing to make things easy for the ex-Governor by any course short of appearing to court and truckle, but on the 11th he had veered round to Greville's opinion: "I have always said that there had been a deference to him and attention to him neither of which I could understand."¹ About the same time he was encouraged in his latest view by a letter he received from the Duke of Richmond, who had been a member of Earl Grey's Cabinet, but was now an independent member of the Upper House. His advice was, "Be steady, be very firm with your ex-Governor, or there will be the very devil to pay." Melbourne informed Russell that he agreed with Richmond's advice, but did not exactly see what he apprehended.

If Melbourne could not read the signs of the times,

¹ Sanders, p. 442.

others were not so blind, and Durham received many visitors. Although he did not commit himself, he said nothing to damp the hopes of those Radicals who looked to him to reorganize the Reform party in England. Many of the Whig newspapers openly discussed his capabilities for the post of leader in place of Melbourne, but Durham was too haughty to court popularity, and he was by no means desirous of being a merely titular head of the party. That is shown by a letter of his dated December 15th, in answer to one from the Westminster Reform Association, requesting him to fix a day for the presentation of the address by the deputation appointed at a meeting held a short time before. Durham said he would have been proud to receive the address itself, as it was expressive of principles in which he entirely concurred, but he had read a report of the meeting, and therefore was precluded from receiving the deputation. The chairman had been chosen unanimously, and he asked the meeting to forget strong opinions on the subject of Canada in order to consider whether they could not "make use of" Durham for the furtherance of their own objects. Durham also objected to the opinions of other speakers. One, Dr. Wade, said that, as an upholder of universal suffrage, he did not see how he could support an address to one who advocated household suffrage, but he did support it, on the ground, as he declared, that Durham might be made use of as a "stepping stone" for the advantage of the Radical party. Durham pointed out that not only did the opinions expressed at the meeting differ from those in the address, but they differed from those he had always upheld himself. "If I had merely responded to this address, knowing, as I do, that many from whom it proceeds entertain opinions and seek objects which I utterly repudiate as destructive to the peace and very existence of society, I should have shared in misleading, not to say deceiving the public. And this I will never do, come what may. . . , I know of no other means by which the true ends of all political exertion may

be secured—namely, the instruction, the respectability and self-respect and the permanent dignity and happiness of the whole people without distinction of classes. To these great ends I believe that the stability of the Throne, the security of property, and the prosperity of industry are not less essential means than the realization of those principles which I expressed to the people of Scotland in 1834. . . . For these reasons I must decline receiving the deputation. I will not run the risk of deceiving anyone. There shall be no mistake in any quarter as to my opinions or objects. I cannot accept support so tendered or an address so voted. In other circumstances I should have considered it an honourable and gratifying mark of public esteem.”

In a subsequent letter, in answer to an explanation by the officials of the association that they could not be expected to be responsible for isolated expressions of opinion, Lord Durham agreed to receive the address. However, his chance of leading the Radicals, certainly of leading a united Reform party, had passed away, and it redounds to his honour that it was so. Durham was face to face with a great temptation. He had, however, seen too much of the work of Papineau and Mackenzie to desire to emulate their careers as a demagogue. Durham could not accept Chartism, and in December, 1838, Chartism was the creed more or less openly professed by the majority of the English Radicals. Further than household suffrage and vote by ballot Durham refused as yet to advance, and he fell between the two stools of Feargus O'Connor and Lord Melbourne. The age of sane Liberalism had not yet arrived, and Durham was a man without a party. A greater man would have created a party, as Peel did, but Durham had to face many disadvantages, not the least of which was the utter disorganization of the Reformers. Chartism was rampant all over England, and Radicals openly professed their preference for Tories over Liberals. Durham could not, as a landowner and an aristocrat, accept

Chartism. Haliburton at a later date warned him that Lafayette's Report on the American Revolution fired the train of discontent in France, but the warning was needless. As yet, however, Durham had not been a month in England, and he hoped that the saner Reformers would rally round him.

While Melbourne was content to let things alone, others of the party were seeking to put an end to the deadlock. Duncannon, who had succeeded Durham as Lord Privy Seal, wrote asking for an interview; the reply he received was that Lord Durham could have no communication with any member of a Cabinet which had used him so scandalously. This was not encouraging, but the attack had not been skilfully planned. Stephenson, one of the adroitest wirepullers of the party, who had taken no part against Durham, was more circumspect. He had first interviewed Lord Grey of Howick, Durham's brother-in-law, and found him by no means unreasonable; although he thought Durham had been ill-treated, he disapproved of the proclamation. The result of the interview decided Stephenson that although Durham would not take the first step, he would perhaps be not indisposed to communicate with Lord John Russell. He then visited Lord Cottenham, the Chancellor, and informed him of his scheme for the reconciliation of Durham and the ministry before the meeting of parliament. The Chancellor preferred to consult Melbourne first, and the latter, ever cautious, discussed with Lord John Russell the advisability of asking Stephenson to find out whether such a reconciliation was desired by Durham.¹

The ministry were eager to meet Durham, or rather to learn what information he could give them upon Canada, as Colborne's dispatches indicated that that was one reason for his hurried departure from Quebec. Glenelg, in accordance with Melbourne's plan, wrote officially upon receiving the announcement of Durham's resignation, and on December 20th Durham sent in his last dispatch

¹ Sanders, p. 443.

regretting that Buller had not arrived, but expressing his willingness to afford them any information they desired. On December 21st Buller and Turton landed at Liverpool after a fifteen days' passage from New York. They immediately posted to London, and we can understand that Buller, at any rate, would encourage Durham in his refusal to become the figure-head of a Chartist party. Whatever hesitation Durham may have felt disappeared by the end of December. On the afternoon of December 27th the Government declared war against Chartism by arresting the Wesleyan minister Stephens, who had been agitating against the Poor Law in conjunction with Oastler. On November 13th, at Leigh, in Lancashire, Stephens had preached "physical force" as the best remedy for grievances, and when Lord John Russell, who was Home Secretary, learned that the Chartists had begun to manufacture pikes, he thought it was time to interfere. The arrest of Stephens was the pricking of the "physical force" bubble, just as later the presentation of the Great Petition, with its array of fictitious signatures, proved that even "moral force" Chartism was nothing formidable.

Convinced that his duty was to support the maintenance of law and order, Durham was willing to sink his private grievances against the ministry. Ponsonby, who had been one of Durham's suite in Canada, was as eager to promote reconciliation as Stephenson, and he was successful in persuading Durham to receive, as well as Duncannon, Lord Grey of Howick, with whom he had not been for some time on good terms.¹ The rest was easy; Lord John Russell returned to London on January 10th, just before this interview, in which Howick seemed to have assured Durham that the ministry would meet him half-way; the really difficult question was the matter of Turton's appointment, on which either Durham or Melbourne would have to admit being in the wrong. On the 24th² Greville writes that

¹ "Greville Memoirs," Vol. IV., p. 162.

² *Ibid.*, p. 163.

Durham had agreed to receive Duncannon, and that the latter found him in a very complacent mood. The question of Turton was soon disposed of, for Durham maintained that although Melbourne had vetoed Turton's appointment to any official post, the one he had received, that of secretary, was in Durham's own household. The ministry were glad to accept the explanation, as peace was desirable, and it was known now that Stanley and Hobhouse could both be mixed up in the affair if a searching inquiry took place.¹ Soon afterwards Durham met Melbourne; we can imagine he was not very gracious, but Melbourne could not afford to resent it, and Durham had probably received a hint from Howick as to possible Cabinet changes.

Melbourne was in a most uncomfortable position. Glenelg's incapacity was notorious, and although it had been agreed that Durham should hand in his Report as soon as possible, there was still the question as to the future policy to be pursued towards Canada. For the present Colborne could preserve order there, but Ellice had warned Melbourne that nothing but the dispatch of an able Governor, against whom no objections could be urged, could prevent the ultimate loss of British North America.² Before Durham had been pacified the Tory papers had accused the ministry of being afraid to meet Parliament, and Ellice wrote again, shortly before December 19th, informing Melbourne that there must be no further delay or he would propose a plan himself.³ But Canada was not the only colony where there was trouble. Jamaica was in a similar state to that of Canada in 1837, and Glenelg could not devise any remedy. At a Cabinet Council towards the end of January, Lord Howick, now sharing his brother-in-law's dislike to Glenelg, took exception to the Colonial Secretary's scheme.³ He informed Lord John Russell, the friend of Durham and himself, of his dissatisfaction, and when the Cabinet supported Glenelg's policy at

¹ Sanders, p. 437.

² *Ibid.*, p. 439.

³ Walpole: "Life of Lord John Russell," Vol. I., pp. 312—313.

their meeting of January 30th, Howick told Russell that he could no longer retain his place in the Cabinet. Russell had sympathised with Durham, and recent events only made it more evident that the incompetent Glenelg was really at the bottom of the ministry's sacrifice of Durham to Brougham, whatever Melbourne's personal feelings may have helped.

Russell was now in a position to demand his way from Melbourne, as he had been about to do in the previous October. How far Durham contributed to his decision it is hard to say, but their well-known friendship lends credit to the supposition. Perhaps it is going too far to say that Glenelg was deliberately sacrificed to Durham, as the latter had been to Brougham, for the Colonial Secretary's continuance in office was plainly impossible. However, Melbourne may have taken it in that light, for it was not until Russell, on February 2nd, positively refused to continue in office on any other terms that he at last consented to replace Glenelg by the Marquis of Normanby. Sir George Grey, the Under Secretary, also resigned; the post was given to Labouchere, but not before a rumour went the rounds of the press that it was to be offered to Charles Buller.

Durham's position at this time was one of irresponsible influence. We may perhaps be able to trace to him Russell's appeal from the House of Lords to the House of Commons when the ministry was defeated in the former on Lord Roden's motion for a committee on the state of Ireland, and Russell's majority of twenty-two must have caused him to wish that he had made a similar appeal against Brougham. Russell was now in fact Prime Minister. Perhaps Durham hoped to succeed Melbourne as the head of the next Whig Government, for Russell's "finality" declaration on the question of reform had offended the Radicals, and Lord John himself had no great desire for office. Durham could afford to be complacent now. On January 31st he handed in his Report to Glenelg, and it

was considered at a Cabinet meeting. The recommendations as to the Clergy Reserves and the proposed resumption of the sole control over the Crown lands may have produced the request that was made to him for his consent to a process of re-editing. Durham was willing, but he had forgotten for the moment his subordinates. To save time Melbourne had agreed that 2,000 copies should be printed before the meeting of parliament, and Wakefield, anxious for the fate of his scheme when in the hands of the Downing Street officials, sent Hanson with a copy of the original edition to *The Times*. On Friday, February 8th, appeared the final section giving Durham's recommendations, and on the 9th and 11th the rest of the Report. Durham had himself distributed copies of the Report to his friends with a request that they should not allow its contents to escape. Easthope¹ of *The Morning Chronicle* received one from Durham, but he did not appreciate the gift, for he seems to have already procured a copy which he meant to publish himself before Durham could forbid it.

However, another story is told by Wakefield's family.² Lord Durham actually consented to send a copy of the Report to *The Times*, presumably to force the ministers' hands. But, when he considered the matter, he seemed disposed to recall his permission. It was too late, and Wakefield replied, "My lord, it is gone already." This certainly tallies better with Lord Durham's explanation in the House of Lords. On February 8th he had indignantly defended himself against the insinuation that he had sent the Report to *The Times* himself, but on the 11th³ he insisted that he had not on the previous Friday said he was *surprised* to see the Report published, but that he *regretted* that it had only been published in part. He then gave an explanation. He had been pressed by the ministers to finish the Report as early as possible, and had done so

¹ Greville, Vol. IV., p. 169.

² Garnett, "Life of E. G. Wakefield," p. 177.

³ "Hansard," Vol. XLV., p. 214.

at the expense of considerable labour and great anxiety of mind. To save excess of labour and cost, proof-sheets of the Report were sent to the ministers, and on the Saturday evening previous a printed office copy was sent to the Queen and laid before her on the Monday. Durham was then informed at the Colonial Office that the Report would be laid before parliament when it met, for which purpose two thousand copies had been printed. When he found that there was a delay in presenting the Report to parliament he had questioned Lord Melbourne, but when he returned home he found a dispatch from Lord Glenelg informing him of the Queen's approbation of his labours. He then obtained permission from one of the ministers to communicate the Report to his friends, and he distributed certainly not more than half a dozen copies. It was curious to find Brougham supporting Durham, apparently quite honestly. The old friends had been reconciled, and were to dine at Lady Blessington's on the 17th. Brougham, however, excused himself at the last moment, saying that he could be of more service to his friend if the reconciliation were not too marked.¹

However brought about, the publication of the Report was the cause of a torrent of criticisms and vituperation seldom equalled. In *The Quarterly Review* Croker, Sir Robert Peel's "henchman," attacked it most savagely, especially for its recommendation of responsible government as the sovereign cure for the disorders in the colonies. Various pamphlets were written in reply to or in defence of it. Judge Haliburton, the Nova Scotian loyalist author, attacked it cleverly in a series of letters to *The Times*, which were afterwards published both at Halifax and London in pamphlet form. Another attack was made by one of the Proprietors of Prince Edward Island, entitled "Facts *versus* Lord Durham," and the Assembly of Upper Canada appointed a committee to draw up a reply also. This reply was replied to in its turn by Francis Hincks, editor

¹ Greville, Vol. IV., p. 169.

of *The Examiner*, who maintained the essential justice of the references to Upper Canada in Lord Durham's Report, and asserted that the Assembly's reply was really the work of Hagerman. The Report was reprinted in Canada both in English and in French, and met with a mixed reception from each nationality.¹ The hostility was caused by the recommendations as to Church and Crown lands, to the union of the provinces, and to the granting of responsible government. The loyalists of Upper Canada were especially furious, but did not always criticise in their own names.

The question has been frequently raised as to the real authorship of the Durham Report, but it is not very important.² "Wakefield thought it, Buller wrote it, Durham signed it," is probably more epigrammatic than true. It certainly does an injustice to Lord Durham, and perhaps to Wakefield. The origin of the legend of Buller's authorship is perhaps not very hard to trace. It may be found in Durham's³ own remark to "Ben Stanley" that he intended to inform Glenelg that when he received from North America the whole of the information which he had left Charles Buller to collect and digest, he would present it to the Government. Durham had not planned to return to England direct, and probably expected that he and Buller would arrive together, for it had been arranged that the latter should leave Quebec on November 20th. On December 20th Buller had not yet arrived, and Durham again pleaded this as an excuse for neglecting to supply the Government with information. Those who wished to disparage Durham—and there were many at that time who hated him—saw in these repeated mentions of Buller a sign of the state of dependence in which Durham was on his chief secretary, for when Buller did arrive Durham soon

¹ Papineau also criticised it in an article in the *Paris Revue des Progrès*.

² See a suggestive article in *The English Historical Review* for April, 1902.

³ Sanders, p. 441.

handed in the Report. Beyond this there is really no trustworthy support for the claim preferred for Buller. The real reason for Durham's inability to complete the Report without him was probably the possession by Buller of all the evidence taken at the various sittings of the Commissions.

A passage in the Greville Memoirs is often misunderstood.¹ The statement that "the whole Report was written by Buller, with the exception of two small paragraphs on Church or Crown lands, which were composed by Gibbon Wakefield and Mr. Hanson," is not Greville's, but is only anonymous information supplied to Reeve, the editor of the Memoirs, by a second person, to whom Hanson is said to have imparted it. A very brief examination of the story tempts one to wonder whether Reeve ever read the Durham Report. It is impossible to find in it "two small paragraphs" on Church or Crown Lands; there are *sections* on both, but they are not small, and Reeve's informant seems to have been uncertain whether they were on the Church or the Crown lands. Another witness is John Stuart Mill, who in his autobiography says: "Lord Durham's Report, written by Charles Buller, partly under the inspiration of Wakefield, began a new era."² Mill was certainly a friend of Durham, but even he somewhat limits Buller's share, and seems to hold that "Wakefield thought" at least part of it. A third witness is Miss Harriet Martineau, who used Charles Buller's MS. Journal in writing her "History of the Thirty Years' Peace." She says: "It is understood that the merit of the celebrated Report is mainly ascribable to him."³ This, however, is far from saying that Buller wrote the Report himself, and it is difficult to see which recommendations are due to Buller, outside the section on Upper Canada.

Having enumerated the chief arguments on behalf of the

¹ Greville, Vol. IV., p. 169.

² Page 216.

³ Vol. II., p. 392 (Bk. V., Chap. XII.).

theory of Buller's authorship, it is right to remember that there are some serious ones against it. In *The Edinburgh Review* for April, 1847, there is an article on Head's "Emigrant," which was, it is practically certain, the work of Buller. This article combats Head's assumption that Lord Durham had no hand in the composition of the Report, and asserts that he had, the statement to the contrary being described as "groundless." Another piece of evidence against Buller's claim is supplied by an article in *The British Quarterly Review* for November, 1849. It reviews Wakefield's "Art of Colonisation," and maintains not only that the Durham Report was principally the work of Wakefield, but also that Buller himself had publicly disclaimed the leading share in the "Canada Report." Unfortunately, the author of this review is not known, but his statement is supported by other evidence.

At the time of its publication no one seems to have credited Durham with any great share in the Report. The *Quarterly* reviewer said: "We suspect, and shall be glad if our suspicion be confirmed, that in Lord Durham's execrable Report Mr. Buller had as little hand as Lord Durham himself." The Report is probably not the production of one man; elsewhere attempt is made to indicate the various sources of Lord Durham's information, and it may be sufficient here to point out the arguments in favour of the view, not commonly held, that Wakefield wrote the Report, partly at the dictation of Lord Durham, with the exception of the section on Upper Canada, which is almost certainly Buller's work in its original shape, although it was doubtless edited to bring it into a line with the style and references of the rest of the Report.

Mr. Egerton, in his "Short History of British Colonial Policy," maintains that Durham wrote the entire Report himself. He relies on the difference between the style of the Report and that of the Report on Crown lands in the appendix. This latter was signed by Buller, but it was

not necessarily or even probably his work. A truer criterion is to compare the style of parts of the Report with that of Durham's own speeches, and especially with that of the proclamation of October 9th, which Durham certainly dictated himself. Arguments from style are untrustworthy, as momentary feeling and varying subject-matter exercise a large influence even upon oratory. A marked difference is easily to be detected in the various sections of the Report. The Introduction and the section on Lower Canada sweep along with a lordly air of contempt mingled with pity for the battles of frogs and mice; he could not understand Radicals behaving as the Radicals of Lower Canada had done. The section on Upper Canada is the work of a politician whose views are already determined, and who can only see facts through the distorted medium of personal sympathies with oppressed reformers; there is no attempt to hold the balance of judgment even as in the previous section, and scarcely any indication of a personal acquaintance with the real state of affairs. Actual blunders, which are indicated later, are not absent, and the sure touch is not there. The section on the Maritime Provinces only professes to be the result of conversations and secondhand information. In the fourth section, dealing with the land question, the style changes again; it is more businesslike and less picturesque. There are, however, traces of personal feeling, as in the eloquent lament over the contrast presented between the two sides of the frontier; but this love of things American was common both to Wakefield and Durham. The final section, the future administration of North America, must be Durham's; no one else could lay down the law as he does, and consign to virtual extinction the national aspirations of a race, with the accompanied consolation of a happier future under other conditions.

It is hardly to be believed that Durham was capable of the actual physical labour of writing the Report with his own hand. He was too highly strung, and at that time too

weak to undertake such a labour. He wrote seldom, but spoke often, and his letters and proclamations have all the passion and rhythm of a personal declaration of feelings. His private secretary in Canada had been young Ellice, but, according to the jeering criticisms of contemporary journalists, his incompetence had proved so notorious that he had been allowed to amuse himself and do his work by deputy. That deputy was probably Turton. Buller's post was official, and ended with Lord Durham's mission. Wakefield alone of the party remained at Durham's disposal, when Buller took up his old political interests, and Wakefield is expressly stated by a newspaper¹ of the time to have acted as Lord Durham's secretary during January. That Lord Durham himself was actually "employed in getting out his Report" is proved by a letter² of Lady Durham to a friend at this time. Lord Durham's authorship is vouched for by a family tradition at least as strong as that in favour of Buller's, and there are other indications, small in themselves, which go to support it. There is nothing in the Buller MS., which Miss Martineau used, and from which a copious quotation was made in the *Spectator* for June 28th, 1900, to tell against Lord Durham's share in the actual drawing up of the Report. Buller says that all the more important matters were referred to him in Canada, and that the plan for a federation of British North America was also his; it is inconceivable that Buller could speak of Lord Durham with the reverence he does, if he were conscious that he himself had been the author of the document on which he proposes to rest Lord Durham's title to fame.

Without accepting unreservedly Dr. Garnett's ingenious attempt to fix the actual share of Durham, Wakefield and Buller in the Report, it is probably quite safe to assert that Wakefield wrote, at Durham's dictation, the whole of the

¹ *The Leeds Mercury* for January 19th, 1839.

² See an interesting letter by the present Lord Durham in *The Spectator* for July 28th, 1900.

Introduction and the section on Lower Canada, although illustrations may have been supplied by Wakefield himself. Head's evidence in favour of Buller's authorship of the section on Upper Canada is not strictly positive, except where it refers to the sources of the information, but the question will be dealt with later when the section on Upper Canada is discussed. It may be sufficient to say that the original draft by Buller was retouched and probably altered in language somewhat to bring it more into harmony with the rest of the Report. Even so, the style marks it out as the work of a different hand. The section on the Maritime Provinces scarcely affords materials for an adequate decision, but the information was obviously given at private interviews, and these pages may have been also dictated by Durham. Dr. Garnett is quite justified in concluding that if Wakefield wrote "any part of the Report on Church and Crown lands he wrote the whole."¹ Hanson may have assisted Wakefield to digest the evidence, but he did little more. Lord Durham was as keenly interested in the land question as Wakefield himself, and had accepted the latter's views; however, if he himself had been responsible for the paragraphs on Church and Crown lands, which seem to have been the passages objected to by the ministry, we can hardly believe that he would have so complacently agreed to delete them. His interests were more political than economic, and Wakefield's were more economic than political. Perhaps we may even trace that vivid picture of the almost magical transformation of the wilderness into centres of American industrial and political life to the same hand that wrote "England and America," although it is described as the result of private conversations and a distant view of Buffalo.

Whether Durham had or had not any share in the fourth section, he certainly had a very great share in the last. It was, however, commonly accepted at the time that he could not have written the Report himself, because he had

¹ "Life of E. G. Wakefield," p. 179.

consistently opposed, during the whole of his stay in Canada, the proposal to unite the two provinces. Head, the *Quarterly* reviewer, and the hostile Canadian pamphleteers, all indicate Buller, Wakefield, or Turton, or all combined, as those responsible for it. Only Haliburton seems willing to ascribe it to Durham, but he does so in no spirit of friendliness. One anonymous Canadian pamphleteer is especially definite, and charges Wakefield with being the one who advised the union of the two Canadas—the jewel of the Report, as he sarcastically terms it. All the evidence goes to prove that his guess was correct, but he would only suggest the reply that Durham had first to be converted.

Head adduces "three conversations and one private letter" to prove that at any rate a month before he left Canada Lord Durham was hostile to the proposed union.¹ No one denies that, and Richardson admits it, but seems to ascribe the change of opinion to the meetings of the British in favour of the union²; to these may be added the failure of the final attempt by Buller to win over the French. Wakefield, in his letter to *The Spectator* of November 24th, 1838, says that an actual residence in Canada had forced him to change his views, and he probably spoke for Lord Durham too. His letter of November 22nd is but a repetition of the view he expressed in writing from Quebec, on September 29th, to Sir William Molesworth³: "Buller has been true to his avowed principles. He has ever been the advocate of mercy and justice against policy. Not so I, who have had deeply impressed on me the opinion first suggested by you, that the Canadians are a miserable race, and that the country must be made English by one means or another." This statement of Buller's opinion confirms the story⁴ that Buller, even after the second rebellion, was a sympathiser with the French. The country might have

¹ In his "Emigrant," pp. 366—368.

² "Eight Years in Canada," p. 36.

³ Mrs. Fawcett's "Life of Molesworth," p. 201.

⁴ See *post*, p. 318.

"been made English" by Sir Charles Grey's scheme of a triple division of the Canadas, but the meeting in support of Lord Brougham at St. Roch may have caused Durham to distrust even the French of Quebec, and so have disposed him to agree in Wakefield's plan.

Beyond the suggestion of the union Wakefield's part in the authorship of the fifth section is probably slight. The recommendations of Durham are thoroughly in accord with his past professions, and are a manifesto in favour of that policy of "ships, colonies and commerce" which he advocated immediately on his return to England. We can scarcely ascribe to Buller any share in the final section of the Report. He never agreed with the policy of uniting the Canadas,¹ and, in criticising Head's "Emigrant," he maintains, which is quite true, that Durham only accepted it as a substitute for the truer policy of a federation of all the colonies. If Durham wrote or dictated the first part of the Report, it is difficult to ascribe the last section, which tallies with it so well, to any one else. Durham was too honest to accept the praise for other men's work and too haughty to sign his name to other men's opinions. If he accepted Buller's view of the Upper Canadian troubles, he made it his own, and advised remedies; if the diagnosis was wrong, the fault was not his. If he included Wakefield's views on the land question and on the union, he only did so when he was convinced of their justness. He was no *fainéant* Governor, neither was he a brilliant Heaven-sent leader. He was an honest man, desirous of doing his best for his Queen and his country; he was placed in a difficult position and acquitted himself to the best of his ability. If he failed in Canada—and who dare say now that he did fail?—if he failed in England, his failure must be put down to his honesty. "And that I will never do, come what may," was his reply to an invitation to become figurehead of a Chartist-Radical party.

The rest of Durham's life was soon over. The exertions

¹ Except perhaps passively. Cf. "Hansard," Vol. XLVII., p. 1282.

of the past year and the many disappointments to which he had been subjected were telling upon a physique never too strong. Still, he kept his word, and worked hard for the Canadas, and for other colonies too. He and Wakefield were keenly interested in a plan for the colonisation of New Zealand. Normanby, Glenelg's successor, disliked Durham, and persistently refused to grant a Charter, although Durham reorganized the older societies into the New Zealand Land Company, and became chairman himself in April. When Normanby went so far as to be obviously about to prevent the sailing of the ship *Tory* with the first pioneers on board, Wakefield secretly left London and went on board the *Tory* at Plymouth before Normanby could make up his mind to act. It was at a dinner, held on April 27th at the West India Dock Tavern, on behalf of the Company, that Durham showed one of the last sparks of the old fire. Trouble was threatening with the United States over the New Brunswick frontier, and one of the members offered the consolation that the sun of England's glory in the West had only set to rise again in the South. Durham arose, and with flashing eyes denounced such a belief; he for one would rather sever his right arm from his body than see the British dependencies in the Canadas severed from the parent State.

Durham was not a man of a single interest, and he was working hard in favour of the repeal of the Corn Laws. He supported the Government nominally, but he generally sat on the back bench in the furthest corner removed from the woosack. One of the spectators said of him: "His face and figure continue so juvenile as to surprise all who see him for the first time. His countenance bespeaks indifferent health, at least a bad digestion, of which a very natural consequence is irritability and discontent; but there is only a tinge of this expression on his otherwise quiet and soft features. He always speaks like a man of great decision, mixed with some impatience." Perhaps

the impatience was excusable in dealing with the second Melbourne ministry. At the end of March Lord John Russell announced his intention of introducing on April 22nd a Bill to provide for the government of Canada, but the trouble in Jamaica delayed matters. On May 3rd Melbourne presented to the House of Lords the Queen's message recommending the union of the Canadas, but on the 7th he announced that the ministry had resigned on account of the Commons' vote on the Jamaica proposals of the Government. The Bill for suspending the island's Constitution had only been carried by five votes, and Melbourne, seeing that the Radicals had abandoned him, gave up the struggle.

In this "bedchamber crisis" Lord Durham took little part, beyond agreeing to present a petition to the Queen from Marylebone congratulating her on her firmness. In a few days Melbourne resumed office, but with less power than ever. On Monday, June 3rd, Lord John Russell opened the debate on Canada by proposing two Resolutions, one in favour of the union of the Canadas, and the other renewing the Act which suspended the Lower Canadian Constitution, with certain modifications, till 1842. His speech was an account of the different remedies proposed for the troubles in Canada, and maintained that the solution put forward in the Resolutions was the only one possible. However, more opposition than was expected was met with, principally based on the objection of the Legislature of Upper Canada, both to the union and to responsible government. The debate was adjourned and readjourned until the proposal to legislate immediately for the Canadas was abandoned. It was arranged that Poulett Thompson, ex-President of the Board of Trade, should replace Colborne in Canada. He was ostensibly to find out the real wishes of the colonists, actually to carry through the Legislatures of the two provinces a Resolution approving of the union.

The political situation in England was unique. Sir

Robert Peel had all but replaced Melbourne, and the Radicals had been willing to assist. Melbourne and the Whigs dared not cross Durham too openly, and yet they were equally afraid of offending Peel and the Tories by accepting his recommendations. As a result they agreed to the "whitewashing" of Turton on February 19th, Brougham assisting at the operation by virtue of his renewed friendship with Durham,¹ but in July they hesitated to trust the Union Bill to parliament. A better choice than that of Poulett Thompson could not have been made for the work in hand. He was, or affected to be, thoroughly converted to Durham's views, and held frequent conversations with him and Buller. When he sailed it was with Durham's approval of his mission, and he made use of that approval to the full.

He met with little opposition in the special Council of Lower Canada, except from John Neilson, who could not even yet approve of the union. From the French no opposition was possible. Held down by force of arms, they listlessly awaited their doom. They had learned that nothing was to be hoped from the United States, and neither Papineau nor Nelson would hear of a fresh insurrection. It was otherwise in Upper Canada, where opposition to the union was strong, especially among the Tories and officials. However, it was union or bankruptcy, and Poulett Thompson did not mince matters. On December 12th, 1839, he had written a long letter to Melbourne describing the state of affairs.² The Government could scarcely command two votes in the Assembly or Council, and the officials voted against its plans; jobbery, financial chaos, and administrative disorder were rife, and most of the public offices were defaulters, but by the 15th he had forced the Legislative Council to accept his plan. Finally the Assembly also gave way; Poulett Thompson had coaxed, cajoled, and even threatened those who

¹ "Hansard," Vol. XLV., p. 598.

² Sanders, p. 446.

resisted. He was made Lord Sydenham for his success, and the Ministry could now face parliament with their scheme.

While Poulett Thompson was reaping where Durham had sown, the latter was gradually sinking into his grave. He took no prominent part in advocating the Union Bill, partly because his health was failing, but more probably because he did not wish the cause of the Canadians to be identified with his own unpopularity. Speaking from his place in the House of Lords on February 11th, 1839, he said : "If noble lords wished to indulge in personalities, he offered himself to them to pursue the course which seemed to them the best. Let them say of him what they pleased ; let them set apart one day for personal attacks ; but then let these things be finished, and then let them come to the great and important question, and the mighty interests involved in it, without any admixture of low, petty, and personal feelings."¹ Before the new Union Bill could be presented to parliament, Durham was ordered to the South of Europe by the physicians. He got as far as Dover, but the journey was too great a strain on his strength. For six weeks he lay dying at Cowes. When he had to turn aside at Dover he felt the end was near, but with his indomitable will-power he actually took a short cruise in his yacht while at Cowes. For a moment it seemed as though he might linger as a chronic invalid, but during the last week he could take only beef-tea and fruit. He was devotedly nursed by his wife, but for two days before he died he could not rise from his bed. On the early morning of July 28th he was taken so ill that a physician was called in again, but the Earl died four hours later, at ten minutes past nine, surrounded by his family. On the day following the body was conveyed by his yacht to Sunderland and thence to its last resting-place at Chester-le-Street. Five days before he breathed his last the Queen had signed the new Constitution of United

¹ "Hansard," Vol. XLV., p. 214.

Canada. Two of Durham's recommendations had been accepted, for in a dispatch to Poulett Thompson, Russell had ordered him to govern Canada in accordance with the advice of the leaders of the majority in the Assembly. Durham died hopeful, if not contented; almost his last words were: "The Canadians will one day do justice to my memory."

His best epitaph will be the verdict of Charles Buller: "If he failed to obtain the results of immediate satisfaction and credit to himself, it was because he laboured for higher and more permanent objects was the first to advance towards wider and clearer views his foresight enabled him to base his policy on those principles on which the coming age of the world will be ruled. . . . From after times he will receive a yet larger meed of justice. For, as coming events in their appointed course shall prove the sagacity with which he foresaw them so will shine forth with daily increasing brightness the character of that statesman who alone in his day rightly appreciated the worth of our colonial Empire, and saw on what deep and sure foundations of freedom its prosperity might be reared. With us, then, that sorrow for his loss, which no time can efface, need be mingled with no vain and injurious regrets for the result of his labours, which will long survive in the bettered lot and grateful recollections of our colonies, with none for a fame which, instead of being laid in his untimely grave, will date from the hour of his death the commencement of a long and vigorous existence."¹

¹ From the Buller MS.

CHAPTER XVI.

THE DURHAM REPORT: LOWER CANADA.

THE Report falls easily into five sections. Nearly half of the total number of pages are taken up by an elaborate examination of the state of things reponsible for the trouble in Lower Canada. The second section, of thirty-four pages, deals with Upper Canada. "The Eastern Provinces and Newfoundland" is the heading of section three; the treatment, however, is very slight, and only seven pages are devoted to it. Section four deals with the disposal of public lands and emigration, and takes up forty-six pages. Section five, consisting of the rest of the two hundred and forty-six pages of Messrs. Methuen's edition of the Report, propounds and discusses the various remedies and schemes of reform which Durham thought advisable.

The section on Lower Canada follows a brief preface. The latter, after reciting how Durham was appointed "High Commissioner for the adjustment of certain important questions depending in the provinces of Lower and Upper Canada, respecting the form and future government of the said provinces," proceeds to explain that the very extension of Durham's powers beyond the usual limit assigned to the Governor-General, while it increased the difficulties of his task, also gave him special facilities for acquiring information. The course of his investigations led him to study, not only the Canadas, but also the other provinces, and he found the same evils in each. He was aware, before leaving England, of the pressing necessity for action, and had promised the ministry to furnish a scheme of reform as soon as possible. Therefore his

resignation had not caused the presentation of a hurriedly extemporised plan, but it had prevented more detailed information. The preface closes with a glowing description of the possible future of British North America, by reason of the population likely to be attracted there by its industrial and agricultural capabilities.

The section on Lower Canada is perhaps the most able, and certainly the most interesting, section of the Report. Whatever views may be held as to the composite character of the authorship of the Report as a whole, the diction and spirit of this portion can only be ascribed to Durham himself. The absence of an Assembly, while it enormously simplified the work of government, rendered it necessary for the Governor to become conversant with every detail of the administration of affairs. He thus saw the actual defects of the system. Relying on the ordinary accounts of the troubles in Lower Canada, Durham was astonished to find on his arrival how utterly they misrepresented the real state of affairs. The actual occurrence of a political struggle in the other provinces helped the illusion, but in Lower Canada he found the question was really one of English *versus* French. How that conviction was driven home has been already related in his own striking phrase: "I expected to find a contest between a Government and a people. I found two nations warring in the bosom of a single State."

Durham sketches rapidly and accurately the gradual embitterment of the two races, first in the cities and finally in the townships and seigneuries. The insurrection of 1837 completed the severance, and now the two races stood openly opposed and the authorities refused, except in one solitary case, to allow those French who professed to be loyal to take up arms. To-day we see that Durham underrated the numbers of the Moderates, whose leader Lafontaine was soon to be. At that time Lafontaine was sulking in his tent, and the failure of the second insurrection had not, during Durham's stay in Canada, taught

men that the day of "Papineauism" was over. All that Durham could see was the steadfast loyalty of the clergy and the more important seigneurs, and the necessarily strong professions of the French Canadian placemen. The presence of the veteran reformer John Neilson in Colborne's Council convinced Durham how little sympathy Papineau's aims found among the British.

We then are told of Durham's amazement when he learnt the aims and actions of the French Liberals. No one had less sympathy than he with the feudal system in any shape, and he was surprised to find the Liberal leaders of men, who themselves at St. Denis and St. Charles believed they were fighting for its abolition, straining every nerve to retain its grossest abuses for their own advantage. He began to distrust his informants in England when a very short stay in Canada taught him the true character of those "slavish tools of an official clique," as Roebuck and his friends had called the British. To his cost Durham knew they were anything but slavish. Before Durham could win their confidence or even neutrality he had to disown all sympathy with the "old gang" at Quebec. This the Governor did not think any great hardship till he found that only in the minds of men like Chief Justice Sewell was there any thought of the misfortunes of the French. It was only with the greatest reluctance that Durham accepted Glenelg's view of the contest—that it was one of races, not of principles; but when he came to study the French character as it had developed in Canada, he understood.

He does full justice to the good qualities of the habitant; he goes further, and does not blame the advocate, doctor, and notary for the course they took in becoming demagogues when every other avenue to influence was closed.¹ It was the fatuous policy of the Constitutional Act that Durham attacks; although a Radical, he saw the folly of

¹ An estimate was made at the time that seventeen doctors, eleven advocates, and five notaries took an active part in the struggle.

giving the franchise to men so utterly unfitted for it by history and habits as the habitant of Quebec. He shows that the inevitable result of representative institutions, divorced from any system of responsible government, was bound to cause discontent even if, as was assuredly not the case in Canada, the oligarchy had taken reasonable steps to keep in touch with the people governed. The influx of fresh settlers alarmed the Canadians, as they managed by their superior energy and ability to engross a large share of the country's wealth. The British, careless as ever of foreign susceptibilities, did not conceal their contempt for everything French. The latter were not backward in retaliating and the estrangement of the two races grew, till they, or rather the French, shunned as far as possible all chance of meeting. They took their revenge by using their majority in the Assembly to prevent the passage of any measure desired by the British, careless of the natural result that the British sank their own differences with the Executive, which were not small, and joined it against the common enemy. The British reformers fell away, too, and Papineau and the extremists were left in control of the Assembly.

Durham does not quite agree with his own dispatch of August 9th in describing the immediate cause of the rebellion. In the despatch he pointed out, quite truly, that the British hurried on the rebellion, which was inevitable, because they were ready and the French were not; waiving the question of whether Papineau actually contemplated an appeal to arms, it is somewhat suggestive of the strong Montreal influence to which he was subjected during the September and October of 1838 to find him in the Report writing of the "treasonable attempt of the French party to carry its political objects into effect by an appeal to arms." In graphic words Durham describes the utter collapse of the French hopes, and the state of despair and stupefaction to which they had been reduced by their defeat; turning to the other side, he paints the triumph of the British and

their sudden transition from a state of danger to one of unchecked supremacy; taught by their spies of the existence of secret conspiracies among the conquered, they trembled in the midst of success and convinced themselves that only the inauguration of a reign of terror could prevent a second rising of the French. "Never again will the present generation of French Canadians yield a loyal submission to a British Government; never again will the English population tolerate the authority of a House of Assembly in which the French shall possess or even approximate to a majority."¹ The history of United Canada falsified Durham's prophecy, but the circumstances were different.

After a few examples of the extraordinary ignorance which places the habitant at the mercy of his unscrupulous leaders, Durham touches on the failure of the jury system in Canada, as, whatever may be the case on trial, the English and French jurymen invariably adopt different views irrespective of the evidence. After expressing his opinion that it is impossible to find out what were the plans, if any, of the French leaders, or the hopes of the habitant from independence, he alludes to the readiness of both parties in Canada to prefer annexation to the United States before submission to their rival at home. Durham's intercourse with Adam Thom had left him in no doubt as to the intentions of the British of Montreal. "Lower Canada must be English, at the expense, if necessary, of not being British."² Durham scarcely needed this hint, for he knew too well how strong were the sympathies between the English north and south of the frontier. As a Radical Durham could not counsel any "gerrymandering" of the constituencies of Lower Canada so as to give the British a majority, and yet he saw that the only possible means of retaining Canada for the English Crown lay in giving power to the British. In spite of all, his sympathy with the French was not wholly gone; he inveighed against the

¹ Report, p. 35.

² Report, p. 41.

folly of those statesmen who were short-sighted enough to encourage the idea of "Lower Canada for the French" by the Acts of 1774 and 1791. He tried hard to persuade himself and others that he believed England was justified in anglicising the country. And yet his arguments do not ring true. Durham saw the real remedy—every incident in his career proves that: he wished to secure liberty to French and English alike, and to prevent the oppression of either. However dimly, the French of Lower Canada had grasped the national idea, and knowing its value, Durham wished to preserve it as the mainspring of a healthy rivalry between the States of a new federal union. Circumstances proved too strong for him; Durham was blameless, and he insisted as strongly as he dare that the Montreal scheme of a united Canada was a makeshift and doomed to failure.

Durham preferred vividness to logical arrangement, and he launches next into a disquisition on the working of the constitutional system of the colonies as a whole, but more particularly of Lower Canada. The story has been already told in previous chapters. In marked contrast to the want of knowledge displayed later in dealing with the history of Upper Canada, Durham seems to have thoroughly mastered the subject of the troubles of Lower Canada. He had been for many months in daily converse with many of the principal actors in the events he describes, and he had the advantage of being able to consult Neilson as well as Adam Thom and Sewell. He was strictly impartial, for his personal predilections were in favour of the men whom he felt impelled by the mere weight of evidence to condemn. He admitted that the conduct of the British Government was not blameless, that the colonies were often neglected, and that the system of government pursued in British North America was bad. No one could be made responsible; the Executive Council was independent of Governor and Assembly alike and was powerful only for harm. Durham recognised the difficulty,

if not the impossibility, of making it "responsible" as demanded by the reformers, unless by transforming it into the Cabinet which Bedard had said it was in Craig's time.

The fact is that representative government was an alien plant among the French. To the habitant the Governor-General was only the successor of the old Intendant, and consequently everything was referred to him or the Civil Secretary; the theory of a bureaucracy still prevailed, but the elaborate machinery which alone made the French centralised system possible was in a ruinous condition, where it existed at all. To complete the disorganization, local government was practically unknown; outside the walls of Quebec, the only representatives of law and order were the Solicitor-General at Montreal, and a sheriff in each of the districts into which Lower Canada was divided. Elsewhere there was neither sheriff, mayor, nor constable, and the counties were only electoral districts. As Lord Durham expresses it,¹ "the French Canadians were unhappily initiated into self-government at exactly the wrong end; and those who were not trusted with the management of a parish were enabled by their votes to influence the destinies of a State." Montreal and Quebec certainly did once possess corporations, but in 1836 the Act was not renewed; the reason was that it gave too much influence to the French.

When Durham comes to describe the legal system of the province his perplexity is almost ludicrous. Roebuck thought he did not seem to understand his advice on this point during their interview, but Durham can be pardoned this, for a more absurd state of things could not be found in a comic opera. No one reading the Report of the Commissioners of 1828, and especially the evidence they took, dare venture to say that any one understood what the law in Canada on any given point really was. It consisted of (1) British Acts of Parliament, (2) ordinances

¹ Report, p. 79.

of the Governor and Council previous to 1791, (3) provincial statutes, (4) so much of the Custom of Paris as had been commonly received in Canada as governing civil matters, (5) British Common Law relating to criminal and commercial cases, and, strangest of all, (6) a strong strain of American law especially in the case of the devolution of inheritances, primogeniture being unpopular in Canada. Perhaps there was once a definite partition of the different spheres of legal action among these various legal systems, but it soon passed out of knowledge. A rude customary law was administered in the more outlying districts such as Gaspé and the Eastern Townships, but, court-houses and gaols being rare, the more important cases were taken to Quebec or Montreal. The country was divided into four superior districts with supreme, original and unlimited jurisdiction, and one inferior district with limited jurisdiction; the superior districts were Quebec, Montreal, Three Rivers, and St. Francis (in the Eastern Townships), and Gaspé, the dreary peninsula at the mouth of the St. Lawrence, was the other. The existence of a coroner for Gaspé was only ascertained by the discovery of an estimate for his salary, and almost the only thing Durham could learn about it was the inhabitants' dislike of the Act constituting them a separate district inferior to Quebec. Gaspé, being inhabited by British, was shamefully neglected by the Assembly, who had expelled its famous member, the historian, Robert Christie, from the House.

At Montreal and Quebec there was a Chief Justice with three puisne judges; at St. Francis and Three Rivers there was but one judge, the complete Bench being made up in term-time by borrowing others. In civil cases these Courts possessed original and unlimited jurisdiction, but, despite the heavy fees, the more important cases were taken to Quebec and Montreal. An attempt had been made to introduce the English circuit system to remedy this, but as the value in dispute must not exceed £10, the Bar generally absented itself, and the short duration of

the various Courts made the system scarcely a success. The real seat of justice to the habitant was the Courts of the "Commissioners of Small Causes," established in the different parishes by the Governor, on the application of a certain number of the inhabitants, under a Provincial¹ Act. The Commissioners appointed by the Governor upon the recommendation of the petitioners had jurisdiction over all debts not exceeding 25 dollars (£6 5s. currency). They were residents in the parish and almost wholly unversed in law. Their constitution was simply an elective judiciary based on an electoral system the most absurd, irregular, and fraudulent imaginable. Durham got his information from one of the subordinate officials in the Civil Secretary's office, who seems to have taken a delight in painting in the blackest colours a system under which he was a mere passive agent, and which caused him and his fellows so much extra work on account of the constant charges and counter-charges brought against the successful candidate for office. As might be expected, the British had little to hope for from these Commissioners, and when they abused their powers by persecuting loyalist volunteers, often for acts done in the course of their duty, Durham was urged by those whom he calls the "highest legal authorities in the country" to abolish them.² Had the Commissioners attempted to deal fairly with the loyalists, it would have been useless, for petitions alleging that they were incompetent would be immediately got up by ambitious would-be successors.

In Lower Canada, with its two systems of law, a good appellate jurisdiction was absolutely necessary, but the legal tribunal, except for cases involving very large sums, was the Executive Council. It was true that the Chief Justices of Montreal and Quebec were *ex-officio* members of the body which sat to hear appeals four times a year, and acted as chairmen in turn when cases from each other's

¹ 6 Will. IV., c. 17.

² Probably Sewell or Sir James Stuart.

district came up, but a quorum of five was necessary, and although laymen often allowed the Chief Justice to decide, they also interfered at times for party reasons. The absurd result also of professional rivalry between the Chief Justices was that each generally reversed his fellow's previous decision in a lower Court, and the law in each district was consequently held to be the exact antithesis of the decision given by its Chief Justice. Men would not take the trouble therefore to plead their case fairly until it came before the highest Court, and when Durham reformed the Court of Appeal it reversed every decision but one in the single sitting it held. Bound by the Constitutional Act to vest the appellate jurisdiction in the Executive Council, Durham placed on the Executive Council the Chief Justice and one puisne judge from each of the two districts of Montreal and Quebec, and also the judge from Three Rivers. M. Vallières de St. Réal, once the rival of Papineau, was given them as an arbitrator, whose position as the ablest French lawyer in the province was universally admitted.

The necessary quorum of five for every possible case was made up by the inclusion of two other Executive Councilors, "one of whom by his thorough knowledge of commercial law, and his general legal experience was commonly admitted to have rendered essential service."¹ Durham would prefer the abolition of a further appeal to the Privy Council in cases where the value is over £500, if an efficient colonial Court of Appeal could be created.

Durham's strictures do not end here. He dilates on the want of sufficient gaols, of the absence of sessions and salaried chairmen, and on the bad system of appointing sheriffs, and the failure to take sufficient security from them, but his greatest objection is to the character and methods of appointment of Canadian juries. Some account of the peculiarities of the Canadian system has already been given in telling the story of the ordinance. In the Report Durham admits that both French and English

¹ One of these was Arthur Buller, the latter perhaps Turton.

had reason to complain, and the acquittal of Chartrand's murderers thoroughly offended his sense of duty. He does not deny that the French acted fairly when the matter was non-political, but he hints, not obscurely, that in the actual condition of Canada the jury system was worse than useless.

Nothing in the legal system of Lower Canada was satisfactory to Durham, and almost least of all, perhaps, the character of the Commission of the Peace. While admitting its usefulness in Great Britain, he condemns it in Canada, where ignorance of law, want of education and vehement party feelings too often made the system of unpaid magistrates the cause of miscarriages of justice. He advises their replacement by a few stipendiary magistrates. Closely akin to the magistracy was the police system. He gives an account of the forty-eight watchmen who, till the expiry of the temporary Act in 1836, shared the duty of keeping order with six day constables. These six were under no efficient control, and when, after May, 1836, the forty-eight watchmen could not be kept up the British portion—the upper town—was policed by a voluntary patrol on account of the numerous murders. In December, 1837, Lord Gosford had formed a sort of force under a Mr. Young, and Durham in June, 1838, finding it too small, gave Young thirty-two men, organised after the London plan, and afterwards increased the force to seventy-two in October. Leclerc, of Montreal, whom Gosford had appointed a stipendiary magistrate, organized a similar force there, consisting of one hundred men. In the country districts the militia had to be used for executing warrants, and they were disaffected.

Durham discusses also the question of education. Arthur Buller, his Commissioner, had formed a plan for obtaining information on a scale too large for any considerable number of replies to be received before the Report was drawn up. Even so Durham is scarcely fair to the French. It is easy to quote stories of children holding reading-books upside down and saying the contents by rote; there were doubt-

less many illiterate schoolmasters in Lower Canada, and the general level of book learning was not high. The Assembly had done well for education in the past, although, eager to use it and everything else as a lever to obtain power, they had furnished the Council with an excuse for abolishing at one stroke the system of elementary education in Lower Canada. Durham proposed to use the Jesuit estates for the support of a system of education—their original purpose—and thought that, in their eagerness to emulate their southern neighbours, both English and French would gladly submit to an assessment for the supply of the funds needed. Fortunately there was little sectarian bitterness, and, if the reluctance of the clergy of all denominations to a purely secular education could be overcome, the laity would welcome such a system. “The British who come to Canada late in life are generally better educated than the French, but the children of either race are equally handicapped in their attempts to acquire learning. The Roman Catholic children owe whatever means of education they possess to the clergy; and all higher education in the province, which is, at the best, not so satisfactory in quality as in the number of institutions of learning, is solely in the hands of the priesthood. The Protestant youth in Canada have no opportunities of obtaining a college education unless they resort, as they do very often, to the United States.”

Durham's private physician, Sir John Doratt, had been made Inspector-General of Hospitals, and had been appointed to investigate the affairs of the various charitable institutions of Lower Canada. His inquiries were cut short, and Head in his “Narrative” makes merry over the long list of foundlings given in the Appendix. Doratt found his task too great, for the condition of affairs in Lower Canada was very bad. Durham says he could not devote much time to this matter, but mentions that Doratt drew his attention to the absence of asylums for the insane, to the insanitary condition of the gaols, especially at Quebec, to the defects of the quarantine station at Grosse Isle, and to

the low state of the medical profession in Canada, due to the ignorance and bad training of the practitioners. There were abuses in the system under which convicts were granted public money for the support of the insane, the invalid poor, and foundlings. In after years Wolfred Nelson, then restored to his country, became Inspector-General of Prisons, and did much to alleviate the horrors he knew by experience.

A section follows on the religious question in Canada. Durham pays a magnificent tribute to the Roman Catholic clergy, whose behaviour had conciliated to them the goodwill of all classes. He praises their loyalty, especially during the disturbed times of his government, and advises that they should not be forgotten in any settlement of the clergy reserves question, especially as they were spiritually responsible for the Irish immigrants, whose loyalty they had secured. Durham asks that it shall be rendered easy to legally establish new Catholic parishes so as to relieve the overcrowding in the seigneuries, and he mentions the reluctance of the priests to encourage the settlement of Protestants on seigneurial lands as being natural, so long as they depend for their livelihood on tithes, which Protestants do not pay. Alluding to the clergy reserves dispute, he says it is not so important as in Upper Canada, but it is necessary that the plan adopted in the upper province shall be extended to the lower also, as fear of Anglican predominance very nearly deprived the Government of the support of some portions of the British population.¹

Durham ends by glancing at financial matters in the colony. He is dissatisfied with the banking and currency system, although he does not think it responsible for the late disorders. This is interesting in view of the statement made by Roebuck that the British merchants of Montreal caused the rebellion, to stave off financial ruin. Dealing with the question of a decrease in the revenue within the last four years of from £150,000 to £100,000, he puts it down

¹ Presumably referring to the Presbyterian element at Montreal.

to the growth of native manufactures and to the smaller amount of spirituous liquors consumed. It is one of the many unaccountable omissions in the Report that the true reason for this diminution of the revenue is not given. In imitation of the Americans, Papineau's followers decided to punish England by refusing to consume articles on which a duty had to be paid. Durham held it to be anything but a healthy sign that, the sum of £68,000 being sufficient to defray the cost of the civil government, there should remain £40,000 to be spent by the Assembly in public works—in other words, in bribing the electorate. It was impossible, however, to decrease the duties, for they affected Upper Canada. He alludes to the unsatisfactory condition of the financial relations between Upper and Lower Canada, although the former received two-fifths of the dues levied. This financial difficulty was one reason why a portion of the people of Upper Canada desired the union of the provinces. Durham mentions also the complaint of the Assembly that the control of the Post Office was not in their hands, and that the surplus revenue of £10,000 was remitted to England. This was also one of Mackenzie's pet grievances in Upper Canada, but neither he nor Durham seems to have considered that a large portion of this £10,000 was only the cost of carriage, which England had already paid. The system was defective, but the efforts of Rowland Hill for Post Office reform were only successful in 1839. It would be impossible to compress more condemnation of a system into so small a space than Durham does in the final paragraph of his remarks upon Lower Canada. The final sentence is: "If the Lower Canadians had been subjected, or rather been taught to subject themselves to a much greater amount of taxation, they would probably at this time have been a much wealthier, a much better governed, and a much more contented people."

The question of the authorship of the Report has been already dealt with, but it may perhaps be as well here

to give some account of the probable sources of Durham's information. It is no slight on Durham to say that even this section on Lower Canada is not first-hand knowledge to any large extent. He was the head of, and practically the sole Executive at a most important crisis in the history of the country. Except for odd moments, he never came into contact with the people he described. His natural hauteur prevented his making friends in the ordinary sense of the term with the people he ruled. He certainly met Lafontaine, Leslie, Morin, and other French leaders, and, later on, was frequently in close communication with Adam Thom, Peter McGill, John Neilson, and various British leaders; but all he knew personally of the habitant was gathered from his rides to Lorette and the various places around Quebec and Montreal. In his grand tour he did not visit the Eastern Townships; in fact, he seldom left his steamer after embarking at Montreal until he reached Upper Canada. He spent barely ten days there, and four of those were at Niagara, where he entertained quite as many Americans as British, and he was only one day at Toronto. Moreover, he was frequently unable to work owing to rheumatism and dyspepsia, and there is no more striking proof of his ability than the life-like picture he gives of Lower Canada.

Durham's sources of information were twofold, personal and literary. By the help of able assistants he mastered the contents of the various Reports drawn up by former Commissioners, especially in 1828 and 1834, and by the members of Lord Gosford's Commission, and he seems to have read or learned the contents of some of the many political pamphlets issued by the two Canadian parties or by their British sympathisers. He was also a diligent observer of popular opinion as reflected in the press. Not only did he read what had been written, but he also questioned the actors in some of the scenes. There is a story mentioned by Morgan in his "*Bibliotheca Canadensis*" that Adam Thom was the author of a large

portion of the Report. This is scarcely true in the strict sense, but it represents the truth fairly accurately as regards the section on Lower Canada. Thom had been an able member of the British party and had defended their views not only in the *Herald* but also in various pamphlets. His "Anti-Gallic Letters," and an able defence of the Legislative Council, signed "Anti-Bureaucrat," are worth reading to-day. He was bitterly hated by the French, and Garneau the historian is very severe on him. Lord Durham wisely saw that Thom was a fitting corrective to the views put forward by Roebuck. He employed him on the Municipalities Commission, and consulted him on various occasions, especially on the question of the federation of British North America. Thom and Neilson between them were calculated to give Durham the views he held as to the late Assembly and the habitants. Before Durham left, he took Sewell into favour to some extent, and he and Sir James Stuart, whom Durham appointed his successor, had both personal testimony to give of the methods of the Assembly. Buller and Wakefield, the latter especially, by their intercourse with Lafontaine, Morin, and the rest, could give Durham useful information. Dominick Daly, the Provincial Secretary, member of the Executive Council, and perpetual office-holder under every system of colonial government, must not be forgotten in a list of Durham's helpers. He tells us that his information on education in Lower Canada is derived from Arthur Buller,¹ and we shall not be far wrong in ascribing to Arthur Buller and Turton the account² of the extraordinary legal system of the province. Sir John Doratt³ is responsible for the information as to asylums, gaols, and foundlings, while among the less important but probably valuable informants are to be classed the unnamed assistant in the Civil Secretary's office⁴ and Young⁵ and Leclerc, who were the heads of the

¹ Report, p. 94.

² *Ibid.*, p. 87.

³ *Ibid.*, p. 96.

⁴ *Ibid.*, p. 84.

⁵ *Ibid.*, p. 93.

Quebec and Montreal police; the law officers¹ of the Crown, especially the Attorney-General, were also useful.

It may, perhaps, be possible upon investigation to trace other sources of information in the writings of travellers, or to conversations with his American visitors, but those already given are the most important. As it was known that Durham could not have himself obtained the mass of information he produced in the short space of five months, part of which time he was ill, the authenticity of some of his statements was challenged. However, so far as concerns this section, Durham undoubtedly secured the best information available. It does not detract from his fame that he had the wisdom to use so well the inferior instruments at his command. He strove to be fair to both parties, and no impartial critic can condemn him. Garneau's eloquence revels in mere vague generalities,² nor does Haliburton³ deal effectively with the section on Lower Canada.

¹ Report, p. 89.

² "Hist. of Canada," Vol. II., *ad fin.*

³ "A Reply to Lord Durham's Report," by a colonist.

CHAPTER XVII.

THE DURHAM REPORT: UPPER CANADA AND THE MARITIME PROVINCES.

THE section of the Report dealing with Upper Canada is the one most open to attack, and it met with great criticism from different quarters. The picture is not sketched with so sure a touch as that of Lower Canada, and is not always perfectly consistent. There are reasons, which will be given later, for ascribing, at any rate, the first draft of this section to Charles Buller alone, and it is scarcely disputed that the facts are taken from a less composite source than are those of the first section.

It is acknowledged by Durham that the information was not acquired during an actual administration of the province, and that his object is only to point out the principal causes which led to the late troubles.¹ The want of any definite party lines necessarily rendered this search somewhat difficult, and—the touch may be Durham's own—it is added that it is really hard to understand what justification there was for rebellion.² As a constitutional reformer Durham had no sympathy with Mackenzie and not much with Papineau; Buller was more impetuous and—if he was the author of this section—proceeds to sketch a state of things which, if true, would go far to justify the action of the extremists.

It begins by describing the settlement of separate bodies of men in isolated corners of the geographical division called Upper Canada; the badness of communications increased this isolation, and hence one's opinion of the country and its desires varied with the part from which the

¹ Report, p. 103.

² *Ibid.*, p. 103.

information was obtained. Toronto, Kingston, Niagara and Guelph were rivals, whose inhabitants fancied they had few interests in common, and hence, in describing each other to travellers, were guilty of misrepresenting facts, and that too voluntarily. A sketch of the political history of Upper Canada is then given, but it cannot be said that it possesses anything like the value of that in the previous section. It is not so much that Buller wished to deceive as that, being a Radical of a peculiar stamp himself, he could not judge fairly of a system so alien to his views of what was right and proper. He disliked the Tories of Upper Canada as much as they distrusted him. According to a letter¹ of W. H. Draper, the Solicitor-General to Head, Buller left the province stating that nine-tenths of the people were disaffected—an obvious exaggeration—and his account of the history of the province is like an attempt to explain why they ought to be even if they were not.

According to the Report, the key to the political troubles is to be found in the existence of the "family compact"—an episcopalian Government House clique—and its persistency in ruling the country despite the wishes of the people, especially in the matter of the clergy reserves. Although Buller accepts the view of Mackenzie as to the "family compact" he affects to doubt the existence of any family connection among the members. The fact is that there was a close family connection, but this was inevitable when the people in question were the aristocracy of Toronto and their power of forming outside alliances was in consequence necessarily limited.² Quoting from the Report,³ "the Bench, the magistracy, the high offices of the Episcopal Church, and a great part of the legal profession are filled by this party; by grant or by purchase they have acquired nearly the whole of the waste lands of

¹ See Head's "Narrative," p. 480.

² See Dent: "Hist. of Upper Canadian Rebellion," Vol. I., p. 75; and Mackenzie: "Sketches of Canada and the United States," pp. 405-409.

³ Report, p. 105.

the province ; they are all-powerful in the chartered banks, and, till lately, shared among themselves almost exclusively all offices of trust and profit. The bulk of this party consists for the most part of native-born inhabitants of the colony, or of emigrants who had settled in it before the last war with the United States ; the principal members of it belong to the Church of England, and the maintenance of the claims of that Church has always been one of its distinguishing characteristics."

It is strange that Buller did not say outright that the patricians of Toronto owed their position to the simple fact that, like the patricians at Rome, they were the original creators of the State, and were naturally as disinclined as the Boers were to hand over the control of their land to a crowd of American and British immigrants. The United Empire Loyalists belonged to the eighteenth century ; many of them had come from the slave-holding States of the south, and even those from the northern States were upholders of the views with which the Whig oligarchy governed England in the eighteenth century. According to our more enlightened ideas they were politically wrong, but we must not forget that in 1838 the poorer classes in Great Britain were without the franchise and that the middle classes had only obtained it in 1832. The "family compact" governed Upper Canada as an aristocracy always governs a country ; it is frequently at first necessary, it is always arbitrary ; but it is seldom, for its own sake, tyrannical except towards the unfortunate individual reformers to whose lot it falls to combat its pretensions. The "compact" was emphatically *not* a Government House clique, if by the "compact" Buller means the Tory party of Upper Canada. Such of its members as were not descendants of the United Empire Loyalists were half-pay officers or discharged soldiers and sailors. The Radical Opposition from the time of Willcocks to that of Bidwell consisted of United Irishmen and Americans with a preference for Republican institutions. What Buller did

not grasp—as he did not really visit the country thoroughly—was the existence of an intensely powerful body of Moderates, largely Methodists, led by Egerton Ryerson, whose name is not once mentioned in this section, although it would come in most fittingly in describing Head's victory over Mackenzie. It was not to the Governor's appeals, but to Mackenzie's quarrel with Ryerson, whom the rebels subsequently threatened to hang to the nearest tree, that the extremists owed their defeat. Their jealousy of the exclusive rights of the Episcopalians to the clergy reserves gave the Reformers the victory in 1829 and 1834.

In Lower Canada the extremists of either party comprised the majority of the population. It was otherwise in Upper Canada, where the extremists, as represented by Hagerman and Mackenzie, were in a hopeless minority. In both countries the real discontent arose from economic as opposed to political troubles. In Lower Canada it was the struggle of an economically inefficient peasantry against the wealth and vigour of a rich and progressive minority of a different race; in Upper Canada the discontent arose from the backward condition of the country, which in turn was due to want of capital and population, and to the existence of a quantity of "dead" land which obstructed all improvement. As is ever the case, cheap land meant poverty, and Buller admits that the reformers obtained power by appealing to the people against the two worst offenders, the members of the compact and the corporation of the Anglican clergy.¹

When Buller is dealing simply with the political question—the demand for a responsible Executive—he is on safer ground. It is an inevitable result of the national difference that while the French attacked the foes they saw—the nominated Legislative Council—Mackenzie and his party went to the root of the matter, the irresponsible provincial Executive. It is doubtful if Buller really understood the immense gap which separated Baldwin and Ryerson from

¹ Report, p. 106.

Rolph and Mackenzie or even Bidwell. He mentions that the "American" party had been increased by the failure of Mackenzie, but probably he was mistaken. In the same paragraph it is said that the views of the great body of reformers appear to have been limited, according to their favourite expression, to making the colonial Constitution "an exact transcript" of that of Great Britain.¹ This is undoubtedly true, but Baldwin and Mackenzie held different views on the subject, and it must be remembered that the phrase "responsible government" even as understood by Lord Durham with reference to the colonies, varied somewhat from the system established to-day. The Tories too were by no means mere blind upholders of tyranny. In their ranks were men who should rather be called "Conservatives." It was this latter party that gained most from Mackenzie's failure, and formed the nucleus of the Liberal-Conservative party after the Union.

Buller next touches on the "jobbing" which was so shameful a feature of Canadian political life. It was not so bad here as in Lower Canada, largely because the surplus funds were few; the construction of the great canal system of Upper Canada had been very expensive, and sheer bad management—not to say dishonesty—had increased the cost so much that funds were available neither to complete the system nor to keep in repair the parts already constructed. He admits that both parties are accused of favouring local interests at the expense of those of outlying districts, and—probably relying on the writings of Mackenzie—mentions the charge brought against the ruling class that the increased cost of the various public works was due to their desire to enrich a few individuals at the expense of the community. It is an unpleasant feature in this section of the Report that such charges are made without any evidence to substantiate them. Mismanagement, gross and inexcusable, there certainly was during the construction of the Welland and Cornwall

¹ Report, p. 108.

Canals, but there were few or none of the outward signs of wealth in the dwellings or mode of life among those men who are supposed to have been guilty.

The Statute Book of Upper Canada abounds with useful and well-constructed measures of reform, and presents an honourable contrast to that of Lower Canada.¹ It is but just to notice every tribute to the ruling party in Upper Canada ; for, strong in the Legislative Council and supreme also in the Assembly in three out of the six which met between the Redistribution Act of 1821 and the appearance of the Report, they could have checked or postponed indefinitely any measure to which they objected. The election which Head won will be considered presently, but it is admitted that as a parliamentary party the reformers were badly managed,² and even when in a majority in the Assembly were practically powerless to pass their Bills.

Before dealing with the administration of Sir Francis Head, the Report gives a sketch of the existing parties in Canada after the great immigration. There were the United Empire Loyalists, and the American or Radical settlers, who formed the original parties ; both, however, agreed in wishing to deprive of their full rights and privileges the newcomers from England after 1825. They were made to feel aliens in the land of their adoption ; elsewhere mention is made of the irksome disqualifications which prevented a lawyer or a doctor from practising his profession until he had served an apprenticeship in Canada.³ Bidwell, the reform leader, was one of the supporters of this disqualification ; something might be said in its defence on the ground that Canadian laws were different from those of Great Britain, and that the medical qualifications of some of the doctors who came over in the emigrant ships were low. The new settlers at first submitted, coming as they did in small parties, and became Tories or Radicals in Canada as they had been in England. As, however, they were more "Imperialist," to use the

¹ Report, p. 110.

² *Ibid.*, p. 106.

³ *Ibid.*, p. 122.

modern expression, than either of the Canadian parties, they formed a sort of third party; Buller seems to hint that they favoured in general a system like that of the Reform Act of 1832, and disliked equally a too powerful Executive and an indiscriminate bestowal of the franchise. Their great aim, whether Radicals or Tories, was to remove the disqualifications under which they suffered.

Ten pages are given to a description of Sir Francis Head's government of Upper Canada. It was warmly resented by Head when the Report appeared, in 1839, and as he could not for some time gain Melbourne's permission to justify himself by publishing his dispatches, he committed an act of defiance. It is true that on the intervention of the Duke of Wellington a tardy permission was given, but Head hastily wrote and published his famous "Narrative" in 1839. It was an unwise act, to say the least; in itself the book is useful as giving Head's view of the matter, and incidentally of correcting not a few careless statements in the Report. The "Narrative" is on the whole fairly trustworthy as to facts, if we remember that they are facts as they appeared to Head. Neither he nor Buller seems to have made wilful misrepresentations, but unfortunately, Buller's story is misleading in not a few points.

In the very first sentence a curious mistake is made. Head is said to have dismissed three Tories from the Executive Council and to have requested three reformers, —Rolph, Baldwin, and Dunn—to succeed them. The story has already been referred to. If Head had dismissed three Tories in favour of three reformers, the latter might fairly assume that the new Governor intended to be guided by their wishes, but the fact was that death, old age, and other causes had reduced the Executive Council to three members, a number totally insufficient. The Report distinctly says that Head dismissed the old members of the Council with a definite end in view¹—to rescue the substantial power of the Government from the hands of the

¹ Report, p. 113.

“family compact,” for he had no wish to be a cypher as previous Governors had been, and really desired to effect certain needful reforms, although unwilling to acquiesce in the claims of the Assembly for a really responsible colonial executive. Beginning with such an idea of Head’s aims, the Report gives a totally wrong idea of the real facts of the case. Head never had any plan when he first came to Toronto; if he was anything, he was a Whig, and his sympathies were entirely with the more recent emigrants. Like them, he desired to retain the Imperial connection, although willing to agree to necessary reforms. The difficulty, as Buller himself saw, was to find out what reforms were really desired, and, more important still, immediately capable of execution. Head had been sent to begin a new reign of conciliation, and he therefore turned first of all to the discontented, and asked what they desired. He interviewed Bidwell and Mackenzie; the former, although he never concealed his preference for a Republic, was too level-headed to vouch for the reality of the grievances enumerated in the famous Seventh Report of Mackenzie’s committee, and his replies to Head’s questions showed the distrust he was beginning to feel of Mackenzie. There were grievances, Bidwell admitted, but he would not descend to details, and Head began to suspect that nothing less than a total alteration in the theory of government would content Bidwell. He was not far wrong, although in justice to Bidwell we must admit that he at least did not believe in armed insurrection.

With Mackenzie the interview was decisive. Head¹ describes him as sitting on a chair too high for him, and turning his head away. Unlike Bidwell, Mackenzie was only too ready to inform Head of the “grievances,” but in his usual way mixed up all together, and gave Head the idea that he was a mere hare-brained agitator. The Governor, however, was favourably impressed by the Baldwins and by Rolph, and as he had no intention of

¹ “Narrative,” p. 35.

being a tyrant or a partisan, he invited the three reformers to accept seats in the Executive Council. He made no stipulation as to the theory of government he should follow, but wished, like George III., to be his own Prime Minister, accepting advice from both parties, but not necessarily acting on it. Baldwin and the reformers were not justified in expecting Head to consult them alone, but he made a blunder in consulting the "leading member of the old Council" alone on the question of certain appointments. As to what followed it is difficult to say; since Buller blundered in the—under the circumstances—rather important point of Baldwin, Rolph and Dunn's appointments, we are compelled to hesitate in accepting his further statement that it was only after a private remonstrance with Head, and on the receipt of a request so to act, that they drew up a formal representation to him on the subject. Accepting this version, Head committed the egregious blunder of answering the remonstrance in such a way that they were compelled to resign, and then—unless the grammatical construction is very loose—sent a communication to the Assembly on the matter.

Head¹ denies this story altogether, and his version certainly acquits him of acting in this most incredible manner. The appointments complained of were made—in pursuance of his plan of impartiality—from the Tories, it is true, but at the same time as Rolph, Baldwin and Dunn received their appointment.² The Assembly, thinking that His Excellency's conduct in appointing men from both parties was not worthy of "a tried reformer," energetically attacked it, and, to justify themselves in the eyes of their constituents, the three councillors drew up an appeal or representation on the matter to Head. Head's reply made it quite clear that, like Sir Charles Metcalfe, he did not consider that anyone possessed the right to criticise his

¹ "Narrative," p. 444.

² According to Hincks' review of the Assembly's Tract on Lord Durham's Report.

appointments. Baldwin, as at the later date, took the lead in resigning his office ; he acted as he ought to have done under a system of responsible government ; but that had not been granted to Upper Canada in 1836, and Head was in the right legally in refusing to acknowledge Baldwin's demands, although the wisdom of his first action is more open to doubt. After they had sent in their formal protest, according to Head, they remonstrated privately, and the communication was from the Assembly to Head.

The Report then describes how Head put the question to the electors that the decision was for or against separation from Great Britain, and that, partly by the help of the British party, and partly through disgust at the action of the Assembly, Head secured the defeat of the reformers at the election following an opportune dissolution. The election was won by unfair means, and yet the new House was more masterful than the most violent reform Assembly, as the new Executive Councillors whom Head made were mere cyphers ; they did not expect support in any other Assembly, and preferred a system of Crown Colony government for Upper Canada. "It is the general opinion that never was the power of the 'family compact' so extensive or so absolute as it has been from the first meeting of the existing parliament down to the present time."

Head denies the whole account, as usual. At a later date he was absolved by the Imperial Parliament from the accusations of Dr. Duncombe, and Buller himself does not believe all the stories he tells of interference at the election. The truth seems to be that Head dissolved parliament, if anything, a few weeks too soon ; for the proceedings in Lower Canada and the quarrel, now very bitter, between Ryerson and Mackenzie would have given him an overwhelming majority, and one independent of the Tories. He was really more popular at the end of his tenure of office than Buller allows, and it is a sheer misrepresentation to call men like Robert Baldwin Sullivan, and W. H. Draper "mere cyphers" ; the other Executive Councillors,

the Hon. W. Allen, the Hon. Lieut. John Elmesley, and the Hon. Captain Baldwin, were all previously members of the Legislative Council. Baldwin was uncle of Robert Baldwin, Allen was President of the Bank of Upper Canada, and Elmesley was an ex-Executive Councillor; the latter appointment was interesting because Elmesley was a Roman Catholic, and an Irish Roman Catholic Executive or Legislative Councillor had not been known before.¹ Elmesley may not have been Irish, but it shows that Head wished to be fair, according to his lights. Head insists strongly that he deliberately abstained from taking part in the election; perhaps this is literally true so far as speaking is concerned, but his sympathies were known. It is strange to see every charge made by the wildest of the reformers brought up as evidence of Head's unpopularity, and of the power of the "compact." How Buller can give the "general opinion" of a province in which he spent so short a time is hard to understand.

It is unfortunate that Lord Durham himself did not stay long in Upper Canada, for he would probably have left a truer picture. Why Buller took so intense a dislike to Head and the Tories it is hard to say, but it exists and distorts his view; it is difficult to accept anything on his unsupported evidence when he blunders on details which ordinary care would have corrected, and it raises an uncomfortable feeling of political bias. Head's appointment to Upper Canada was a mistake, but no fair-minded man can lay at his door the troubles of 1837. Buller admits that Mackenzie found very few supporters in Upper Canada, and that the Patriots were now mostly Americans. One of the strongest proofs of this was given by the absolute unanimity of the province during the second rebellion. Again, Buller strings together a list of grievances varying from Head's regulations as to banking to the law which forbids a man to vote until he has paid all the instalments of the price of his land, contrary to the

¹ Report, p. 129.

custom which prevails in some of the newer States of the Union ; he admits almost at the same moment that it is very possible that there are but few cases in which the departure of an Englishman from Upper Canada to the States can be traced directly to any of these circumstances in particular.

Having disposed of Head's Government, Buller proceeds to what is really an attack on Sir John Colborne, although nominally only discussing the clergy reserves. The story has been already told, but reference must be made to two or three grave blunders which are made. He totally misrepresents the real facts as to the establishment of the fifty-seven rectories by Colborne. In the first place the number is too large, and, moreover, Colborne actually persuaded Strachan to be content with their restriction to the churchyard ; it is scarcely a just presentation of the facts to say that the establishment of the rectories altered the aspect of the question. Colborne had no alternative but to obey his orders, and so far from the matter being hurriedly carried through, it was debated frequently during the whole of Colborne's stay in Upper Canada. One sentence is inexplicable, unless Buller took all his information on trust from party pamphlets. He says : " It is understood that every rector possesses all the spiritual and other privileges enjoyed by an English rector ; and that, though he may have no right to levy tithes (for even this has been made a question), he is in all other respects in precisely the same position as a clergyman of the Church of England."¹ One is tempted to ask if Buller ever read the Act of 1791 ; the idea was to establish the Church of England in Canada, but to give it the clergy reserves instead of tithe where rectories were created. Waiving the question as to the meaning of " Protestant clergy," it was never seriously maintained that other than Anglican rectories were meant, and Buller seems ignorant of a law²

¹ Report, p. 125.

² Kingsford, Vol. X., p. 215 ; and Nickall's " Statutes of Upper Canada," p. 602.

that was passed in 1823 by the Provincial Legislature, in which it is laid down that the Anglican clergy have no claim to tithe.

No one, perhaps, now would defend the system by which the Church of England received its endowment in Canada, but it is necessary to remember that for some time it met with little opposition. A true Radical, Buller asserts that it established the Church of the minority and was therefore wrong. The Anglicans would retort that it was the Church of the majority in the Mother Country. As has been said, the actual numerical relations of the various Churches in Upper Canada cannot be discovered now, but Strachan would decline to count all Methodists as one denomination, or all Presbyterians, for the hostility between various subdivisions of these bodies was as great as between them and the Anglicans. It is difficult to understand Buller's meaning when he talks of the "imperfect equality" Dissenters had but recently obtained in England, and of their disinclination to leave a similar heritage to their children in Canada; it was not within the power of the Provincial Legislature to impose religious disqualifications, and, however injurious the clergy reserves may have been, they were created in 1791, when the Anglicans were certainly in a majority. Buller, or Durham—for on this question we can imagine they would have come to the same opinion—seems to hint that he should prefer in Canada the "voluntary system," which he praises so highly as giving excellent results in the United States. He seems to have thought, also, that the Anglican Church in Canada was only the Church of the rich, but the pauper immigrants and many of the non-pauper farm-labourers were nominally Anglicans.¹ He also makes the extraordinary statement that the organization of the Church of England, being parochial, is not suitable for the circumstances of a new country; he had apparently never met any of the missionary clergy of that communion

¹ Bettridge: "History of the Church of England in Upper Canada."

during his stay in Upper Canada, but Bettridge gives quite a different account of his Church's activity and organization in Upper Canada. The plan recommended in the Report is that the Imperial Parliament should repeal all its Acts so far as they relate to the clergy reserves and allow the Provincial Legislature to settle the matter.

There follows next a rather amusing account of the Orange societies of Upper Canada. These were not so much religious as political; for Catholics were persuaded to join, Buller says, and the toast of the Roman Catholic Bishop Macdonnell, was drunk together with that of the "pious, glorious, and immortal memory," although the customary abuse of Catholics was not omitted. These Orange societies were, as Buller saw, really Tory organizations, which aimed at the conservation of the Imperial connection; they were not necessarily United Empire Loyalists, but they shared their views on many points, especially their hatred of everything American.¹ Buller calls the Orange Lodges "an illegal organization," but he was probably mistaken. Head refused to take action against them, and at a later date they obtained recognition and a charter from the Government.² He is probably right in maintaining that they attempted to turn the fate of elections by terrorism, but that was a practice they had in common with their opponents. The case of Leeds and Grenville was especially bad, but it seems to have been accepted as the usual thing that the election for this constituency should not pass off quietly.

"In addition to the irritation engendered by the position of parties, by the specific causes of dispute to which I have adverted, and by those features in the government of the colony which deprive the people of all power to effect a settlement of the questions by which the country is most deeply agitated, or to redress abuses in the institutions, or in the administration of the province, there are

¹ Report, p. 130.

² In 1890. See Todd: "Parl. Govt. in the Colonies," p. 484.

permanent causes of discontent, resulting from the existence of deep-seated impediments in the way of its industrial progress. The province is without any of those means by which the resources of a country are developed and the civilisation of a people is advanced or upheld. The general administration of justice, it is true, appears to be much better in Upper than in Lower Canada. Courts of Justice, at least, are brought into every man's neighbourhood by a system of circuits; and there is still some integrity in juries."¹ This quotation is an almost perfect synopsis of the section on Upper Canada, and in the concluding paragraphs of this portion of the Report, where political bias has little room to work, there is a most able account of the real economic as opposed to the sentimental root of the trouble in Upper Canada. The country suffered from want of capital and population, and from the absence of a scientific system of colonisation and land granting.

Reckless grants of land to speculators, or to men who sold it to speculators, had cut up the settlements into a number of isolated blocks. Crown reserves and clergy reserves existed in every township, and as there was little, if any, effective local taxation, roads and bridges were all but totally absent. Churches, mills, schools, and post-offices—in fact, all the usual outward signs of a civilised community—were scarce, and in consequence even the rich and well-educated settlers saw their children destined to grow up in ignorance. Lands had been set apart for the support of education, but by far the most valuable portion had been diverted to the endowment of a University at Toronto, in whose advantages only the children of the rich could share, on account of the cost of living in Toronto. Few settlers grew wealthy—a rude and comfortless plenty was the highest point to which they could attain—and many of the settlers were poorer than when they came to Canada. Even those who were satisfied with the political system of the province were

¹ Report, p. 131.

disposed to think that there was something wrong, when they compared Upper Canada with the neighbouring States of the Union.

The picture thus drawn is only too true a one of certain parts of Upper Canada, especially those settled at a later date in the more outlying districts. The lands of the British North-American Land Company were rather more fortunate, for it had been arranged that part of the purchase-money of those lands should be devoted to the building of roads and bridges, and to the general improvement of the country. It is a mistake to take Buller's picture too literally as applying to all Upper Canada, but apart from this, it must be confessed that it certainly describes very accurately the wretched condition of many of the settlers. The contrast between the Canadian and the American shores of the St. Lawrence will be better dealt with under section four.

Upper Canada had no port, but with splendid courage, to which Buller gives unstinted praise, it set to work to make a system of canals to give it access to the lower St. Lawrence. The Welland Canal cut through the neck of land north of the Niagara Falls which separated Lake Erie from Lake Ontario, and a second canal was commenced to enable ships to avoid the Long Sault Rapids. This was the Cornwall Canal, but the expense was too great for the province, and it could not be completed. To pay for these and other public works large loans had been created, and the debt aggregated the enormous sum, for Upper Canada, of £1,000,000; the revenue was barely £60,000 a year, and was hardly adequate to pay the interest. This necessitated the introduction of a system of local assessments for other works, but it was obvious that the province must soon resort to direct taxation to meet its ordinary expenditure.

These canals, which should have been a source of wealth to the province, were rendered almost useless from want of money to complete the Cornwall Canal and to keep

the works of the Welland Canal in repair. Hence the anticipated tolls were not available as a return for the outlay, and Upper Canada was filled with a feeling of bitter disappointment. Unfortunately, they had neglected to secure adequate pledges from the Legislature of Lower Canada that they would deepen the channel of the lower St. Lawrence, which, in the existing state of affairs in the lower province, had not been done. (The excuse alleged was the mismanagement of the Welland Canal, but the British saw in it a design to check all commercial enterprise.)

While their canals were thus all but useless, the people of Upper Canada were at the mercy of the "Forwarders" of the St. Lawrence and the Rideau Canal. These middlemen possessed a monopoly of the transportation of merchandise through the lower to the upper province. The St. Lawrence route was only open in summer, and that too several weeks later than the route by way of New York through Oswego. The Report recommends the introduction of a "bonding system," making New York the port of entry. One reason of the attraction the United States possessed for some colonists was the fact that it was possible to buy goods cheaper there. There were also in existence laws which were framed to support monopolies in England, but which had remained unrepealed when the monopolies were abolished. One of the most vexatious of these was the tea duty. They did not really make the articles in question any dearer, for, as in the case of tea, an extensive system of smuggling was carried on all along the frontier, and the fair dealer was undersold by the smuggler. Moreover the loss to the provincial revenue was large.

It could well be believed that such a state of things was not borne without repining even by the loyal, and it was well known that the proposal to transfer Montreal to Upper Canada was due to a desire to avoid the inconvenient dual Customs system, while others thought that the only efficient

way to settle the difficulty was to unite the two provinces. It could not be a matter of surprise that in despair of finding a sufficient remedy from the Imperial Government, men should turn their eyes to the neighbouring Union, where every industrial enterprise prospered. Men the most attached to the existing form of government in Upper Canada would find compensation in the beneficial results of a union with the neighbouring State. A dissatisfaction with the existing order of things necessarily extended to many who desired a change in the political institutions of the province; they at least desired to see the government administered in a very different mode. Men wanted to feel that there was some definite policy which was being carried out towards the colonies, to which all must conform themselves and which would be independent of the state of parties in England. Neither party could count on the issue of their struggles because, although they could determine their strength in Canada, they could not tell how soon some hidden spring might be put in motion in the Colonial Office in England which would defeat their best laid plans, and render utterly unavailing whole years of patient effort.¹

The sources of the information contained in the above section can be fairly easily traced. Draper's letter to Head has been already referred to; according to Draper, Buller acknowledged to several people that his information was largely acquired by sending out his servant to converse with people while Buller was lying ill. There is nothing improbable in this, although Buller's strong political bias would be sufficient to account for some of the more glaring misrepresentations. He probably had pretty well made up his mind as to the rights and wrongs of the case in Upper Canada before he left England, and all that his

¹ The Tories complained of the Radical Mr. "Over"-Secretary Stephen; the reformers of the influence of the Church Missionary Society with Lord Glenelg. Durham and Wakefield both felt the latter in the affair of the colonisation of New Zealand.

servant could learn would only convince him the more firmly of the truth of his previous views. The actual picture he gives us is a curiously shallow one; little is stated definitely, although insinuations or suggestions are common. The section abounds in statements introduced by "it is said," "it seems," and such phrases, and this points to a want of a personal understanding of the situation. At the most, Buller was not a month in Upper Canada, and there is nothing to indicate that he saw anything of the province except the districts around Niagara, Kingston, and Toronto. None of Lord Durham's suite could give Buller the information, and we are driven to the conclusion that Draper's account is correct, so far as it goes.

However, Buller did not rely upon his servant's information alone. Either he or Wakefield furnished Durham with an abstract of the more important evidence relating to Upper Canada that was given before the Hanson Commission on the waste lands of the colonies, and there are distinct traces of the Seventh Grievance Report, and of others of Mackenzie's writings, particularly of his "Sketches of Canada and the United States." Not so definite, but probably still to be found, are echoes of Robert Gourlay's "Statistical Abstract," which, it is well known, was partly written by Marshall Bidwell's father, and embodied his opinions. The Report praises the Statute Book of Upper Canada, but the praise is probably general rather than for any specific act, as there is little trace of any extensive knowledge either of the Journals of the Assembly or of the different Acts passed. Buller did undoubtedly read some of the tracts written by the reformers, especially on the subject of the clergy reserves, and his account of Head's election campaign is suspiciously like a re-statement of the charges laid against the Governor by Dr. Duncombe.

In ascribing this section to Buller it is not intended to maintain that in its present shape it is the work of the

Chief Secretary. It bears traces of Durham's own handiwork, especially in the final paragraph. That strikes a higher note than the uncertain semi-accusations of misgovernment and tyranny; it is an attempt to get at the true root of the difficulty, the wretched shilly-shallying policy of Downing Street, and it agrees with the views which Draper stated that Durham himself professed. There is something in it of the defiant spirit which was so marked in the proclamation of October 9th. Durham never hesitated to admit that a residence in Canada had changed his views, while we know that Buller was stated to have expressed sympathy with the French even after the second rebellion. As Buller was the only member of his suite who had any information about the upper province, Durham probably took his rough draft as the foundation of his Report. It is of course impossible to say exactly how far the section on Upper Canada owes its final shape to Durham, but we shall not be far wrong in assuming that the conclusions and recommendations are Durham's own. The personal attacks on Head and Colborne, especially that on the latter, could scarcely originate with Durham himself, for he was on the best of terms with Colborne when he left Canada. Head is seldom a trustworthy judge, but perhaps for once his verdict is not far wrong.¹ He says: "All the complaints made in the Report are true, but they are only the voice of a small minority." It may have been only a small minority who dreamed of revolution with Mackenzie or of peaceful annexation with Bidwell, but a vast majority of the people of Upper Canada demanded economic reforms, and it was all the more pitiful because of their inability to obtain them unaided. If the Durham Report did nothing else, it taught the people of England how nearly they had lost a glorious inheritance from mere failure to see in it anything more than a refuge for half-pay officers or troublesome paupers.

¹ "Narrative," p. 483.

The third section of the Report very briefly touches on the situation in the Maritime Provinces. Durham explains the small attention he gave to the latter as being due, firstly to lack of time and secondly to the knowledge that there were no burning questions to be settled in any of them with the exception of Newfoundland. The general political difficulties in these provinces resembled those which were to be found in the Canadas, and arose from the same cause—the Constitution which gave representative institutions but not responsible government. However, the population was British and loyal, and while the popular party disliked the political views of the various Governors, it uniformly respected them for their private virtues. The parties were evenly balanced on the whole, and both were content to accept the verdict of the electors. In New Brunswick the Assembly had prevailed upon the Colonial Secretary to surrender all the provincial revenues, and as recent appointments had given the party which had a majority in the Assembly control of the Legislative and Executive Councils, the government of New Brunswick, instead of being as before one of the most difficult, has become now the most harmonious.¹

Mr. Young, one of the delegates from Nova Scotia, gave Durham a paper (printed in the Appendix), in which he stated that the difficulties in that colony arose from the presence in the Councils of men who, however much they were respected personally, were out of harmony with the majority in the Assembly. Moreover, despite the express orders of the Colonial Secretary and the remonstrances of the Assembly, the Church of England had been allowed to retain a majority in both Councils. (It should be mentioned that in Nova Scotia a large proportion of the population were Presbyterians or Baptists, but little religious intolerance was displayed.)

The Report next touches on the deplorable condition of

¹ For a brief account of the history of the Maritime Provinces, see Roberts' "History of Canada."

the inhabitants of Prince Edward Island, who were the tenants of the Proprietors, among whom the Island was parcelled out soon after its cession. All efforts of the Island Legislature to expropriate these owners have failed because of the power and influence they possess with the authorities in Downing Street. Sir Charles Fitzroy, the Governor, was genuinely anxious to put an end to the anomalous condition of affairs which left the islanders at the mercy of a few absentee landlords who, it was alleged, refused to encourage the improvement of the province. Durham attempted to devise a scheme to please all parties, but it failed, as did every other attempt, until, when the province entered the Dominion, in 1873, the proprietors were bought out. The island was indeed fertile, and the surrounding seas teemed with fish. Durham's informants—he mentions Major Head only, but we know that Lelacheur was also one of them—seem to have rather misled him as to the true condition of affairs. The account given in the Report should be checked by the able little pamphlet published anonymously by "A Proprietor," and entitled "*Facts versus Lord Durham.*" The first mistake was made when the Imperial Government separated the island from Nova Scotia. As a matter of fact, the province, instead of being one of the most backward, was, for its size, the most flourishing of the Maritime Provinces, and its "scanty population of 40,000" was the densest in British North America. Head calculated that the island could support 400,000 in comfort on its agricultural resources alone, and this produced an amusing calculation from the "Proprietor," that, going by the figures supplied by the map which Lord Durham used, 400,000 people must live on 1,106,460 acres by agriculture, and that 2,000 men should have worked for the seventy years which had elapsed since its colonisation, merely in grubbing up roots, if the island was to be the granary of the colonies. Again, Head said that only 100,000 acres out of 1,400,000 were under cultivation, but Bouchette is quoted to prove that, in 1831, 189,000 acres were under the plough,

and it is asserted that, according to the census of 1833, one-third of the whole island was parcelled out in lots of from 30 to 1,000 acres each among farmers who were, many of them, owners and not tenants.

The true facts of the case seem to be as follows. In 1769 large grants of land were made to certain officers and others on condition that they settled the island with foreign Protestants. Soon after the War of Independence broke out, and most of the grantees took part in it. Governor Paterson confiscated many of the estates during their absence on account of the non-payment of quit rents as agreed, and bought large quantities of confiscated land for himself. At the end of the war, in 1783, much litigation arose over these proceedings, and the actual possessors were afraid to spend money, even when they had it, on estates to which their titles were disputed. Some land changed hands, and it was seen to be impossible to colonise the island with foreign Protestants. The Government tacitly waived the clause, but the outbreak of the Napoleonic wars prevented emigration till 1815. Prince Edward Island was little known, and it was passed over by the bulk of the new arrivals. The Island Legislature, representing the actual tillers of the soil, wished to tax the land of the Proprietors which was not under cultivation, to force them to sell; the Proprietors were only too eager to sell, but they held out for the best possible terms, and suspected that the tax on wild lands, which the Assembly were at last allowed by the Imperial authorities to levy, was unfairly distributed, and that the funds thus raised were used to beautify Charlottetown instead of to develop the province. Lelacheur and the reformers in the Assembly, instead of proposing a reasonable scheme, were in favour of a general escheat of the Proprietors' lands, and the latter naturally objected to this most determinedly. The population of the island was small for its resources, and it was more given to politics than to industry. Part of the people tilled the fertile lands, while others were fishermen. They

could not, of themselves, produce a fleet large enough to keep out the enterprising Americans, and at that time, as till long after, British capitalists preferred to develop American rather than Canadian industries.

The picture Major Head gave of the other Maritime Colonies was equally depressing. Haliburton is indignant at what he calls Head's perversion of facts.¹ It is curious that the true reason for the abandonment of "half the tenements and the lands falling into decay" is not mentioned in the Report. During the Napoleonic wars the Imperial Parliament gave the colonies a preference over the Baltic nations in the British timber market, and this proved so profitable to the colonies that lumbering rapidly succeeded in ousting agriculture as the leading industry in the Maritime Provinces. It required very few labourers, and indeed, apart from this, the attractions of Upper Canada were far superior to those of Nova Scotia and New Brunswick, from the point of view of farming. Much of the territory of the latter was waste, although rich in minerals. Haliburton also insists that the speeches of the Governors at the opening of the various Assemblies contradict Head's assertions of stagnation, poverty, and want of enterprise. There can be no doubt, however, of the truth of Head's statements as to the aggressiveness and success of the inhabitants of the United States, who, as in Lower Canada and Upper Canada, were settling on the more fertile lands.

In reading Head's account of the striking difference between the American and the Canadian sides of the frontier, one is tempted to wonder whether he was not given to colouring for the sake of effect. Maine had certainly been settled longer than either Nova Scotia or New Brunswick, and it is quite possible that Head was comparing Maine, as defined on British Government maps, with the Maritime Provinces, as defined on the same maps. There was a vast tract of territory, however, in dispute, and,

¹ "Reply to Lord Durham's Report," by a colonist.

although there were scattered settlements in it, it is not fair to consider it as part of New Brunswick proper. Again, Haliburton mentions a curious Nova Scotian custom of leaving the old log hut to fall into decay when the farmer could afford to build the more pretentious "frame-house" on another part of the estate. In that case Head would strictly describe the truth when he spoke of "half the tenements abandoned," and the substitution of lumbering for corn growing would account for "lands everywhere falling into decay." Despite all these qualifications, however, it is evident that the Maritime Provinces were not developing in as satisfactory a manner as might be. Like Upper Canada, they needed not only population but capital. As Durham says, the capitalists at Halifax preferred the high interest obtainable in the United States to the return they received from their outlay in the backward Maritime Provinces.¹ Haliburton hints that the inhabitants devoted to politics the time they should have spent in working on their farms, but perhaps they were in the first instance merely ardent politicians because they wished for remedial legislation.

Durham does not profess to have any special knowledge concerning Newfoundland, as, owing to difficulties of communication, he heard nothing more of the Assembly's intimation that they intended to make an appeal to him; they had a difference with the Governor, the immediate origin of which was a dispute with a judge. Durham thought the political troubles were the same as those of the other provinces, and if, as was said, the state of society in the island rendered it inexpedient to leave the whole of the local government to the inhabitants, it would be most advisable to incorporate Newfoundland with a larger community.

It would take too long to discuss the actual cause and course of the dispute in Newfoundland. The difficulty arose from the presence on the island of a number of poor

¹ Report, p. 143.

Roman Catholics from Ireland, who, although they did not intend to permanently settle there, secured the franchise. They voted at the direction of their clergy, much to the disgust of the Protestant inhabitants. There were other matters in dispute, but the autocratic exercise of its privileges by the Assembly caused much discontent. The judge referred to was probably Boulton, the ex-Tory leader from Upper Canada, who was given a post in Newfoundland by the English authorities, although they refused to reinstate him in Upper Canada. He was as reckless in his language towards the Roman Catholics of Newfoundland as he had been towards the reformers, and the Assembly warmly resented this.

Durham is quite explicit as to the sources of his information on the Maritime Provinces. He relied chiefly on Major Head, a Commissioner whom he sent to the Maritime Provinces to gather materials. Head not only used his own eyes, but he also conversed with the merchants, American and Canadian, whom he met with. He seems to have been an honest but rather credulous man, and he had little idea of testing the extraordinary statements which some of his informants made to him. Durham's second source of information was his communications with the Lieutenant-Governors of the various provinces who met him at Quebec in August, 1838. Besides these he had frequent conversations with the witnesses before the various Commissions, especially that on the Crown lands. The most trustworthy source of information which Durham possessed was undoubtedly the delegates from the Maritime Provinces, who met him in September. Many of them, especially Young of Nova Scotia, were leading reformers in their respective provinces, and although their evidence cannot be accepted as indisputable in every case, they were the most reasonable of all the politicians in Canada. Durham realized their value, and not only included the paper drawn up by Young among the Appendices to the Report, but also made a copious extract from it in the Report itself.

Unfortunately, all were not so trustworthy as Young, but Durham had no means of checking the information given by men like Lelacheur. On the whole, the section on the Maritime Provinces is best compared with that on Upper Canada. Such mistakes as Durham made were due to his defective information. While he points out the defects of these provinces, he does full justice to the patriotism of their inhabitants, and he found some of his staunchest supporters there.

CHAPTER XVIII.

THE DURHAM REPORT: PUBLIC LANDS— EMIGRATION.

DURHAM heads the fourth section "The Disposal of Public Lands—Emigration." In his mind the two matters were closely allied, but the treatment is very unequal. The Durham Report differs from the ordinary parliamentary Paper in being intensely personal and practical, and in no section is the difference more marked than in this. It is a treatise in itself on the "art of colonisation," and no *résumé*, however full, can do it justice. It begins by pointing out the paramount necessity to new countries of a good system of land-granting. Men must neither be "pinched for room in the wilderness," nor scattered over a vast tract of country and cut off from one another by stretches of wild land owned by the Crown or absentee landlords. The cultivator should have easy access to market by good roads; schools, churches, and the apparatus of civilisation should be easy to secure; and careful surveying should enable men to obtain a good title to their lands without needless litigation.

There should be a definite, well-known, and uniform system of granting lands, unattended by that mystery, irregularity, and uncertainty which is ever present when frequent changes of method are the rule. Nor should any partiality or class prejudice be exhibited in dealing with the distribution of public lands, for then colonisation is discouraged, and the neglected settlers, who are of course in the majority, are hostile to the Government. When the true system is adopted, a constant and regular supply of new land is at hand to meet the population as it increases

by births and immigration ; there are "all the advantages to which facility of transport is essential ; certainty of limits and security of title to property in land ; the greatest facilities in acquiring the due quantity ; the greatest encouragements to immigration and settlement ; the most rapid progress of the people in wealth and material comfort and social improvement, and a general sense of obligation to the Government. What a contrast do the two pictures present ! Neither of them is over-coloured ; and a mere glance at both suffices to show that in the North American colonies of England, as in the United States, the function of authority most full of good or evil consequences has been the disposal of public land."¹

The Report goes on to state that Durham hoped from the success of a new method of disposing of public lands in the Australian colonies to be able to recommend beneficial reforms in North America, and therefore took precautions for instituting a thoroughly efficient inquiry into the whole subject, generally and in detail. He was the more disposed to do this because the select committee of the House of Commons in 1836 in a similar inquiry furnished abundant information on every colony except those of North America, which were specially excluded from its orders, and he could not find in England any authentic or at least sufficient evidence as to the disposal of public lands in any of them. He was the more convinced of the importance of the matter by the number of petitions he received, from people who believed in the great extent of his powers, relating to the administration of the Crown Lands Department, and by the deep and universal interest taken by the colonists in the question. Durham then refers to the Appendices, attached to the folio edition of the Report, for the minutes of the evidence taken before his committee on the subject of Crown Lands, and to a separate Report which contained "the outline of a plan for

¹ Report, p. 146.

the future administration of this all-influential department of Government."

This plan was really that of Edward Gibbon Wakefield, who was the master both of Durham and Buller in colonial questions. Wakefield was employed by Durham, or employed himself, on other matters, as has been mentioned, but though a poor diplomatist, he was an able writer on colonial subjects, and he and Hanson were probably responsible for the real work of the committee, although, in accordance with Melbourne's request and Durham's promise, the name of Buller was inserted as the ostensible Chief Commissioner. Durham had learned to appreciate Wakefield's genius in the movement which ended in the foundation of South Australia on the new plan and had fully intended to place Wakefield in charge of the investigations he proposed to make.¹ Perhaps a few words on the subject of Wakefield's scheme may be useful, the rest of the section being little more than extracts from the evidence of witnesses which proved how far the authorities in British North America had departed from the true system.

Wakefield's pet abomination was the system of convict settlements by which New South Wales and Tasmania had been first colonised; he objected scarcely less strongly to the methods of the Colonial Office, for he and his friends looked upon it as the "preserve of the Church Missionary Society," which in the supposed interests of the natives opposed all his schemes of scientific colonisation. Wakefield's ideal was the national emigrations of the swarms from the old Greek cities; their nearest representatives were the Puritans who sailed in the *Mayflower*. He wished to make the new settlements as closely as possible copies of those at home; he was no Radical, and admired the graded ranks of English society, with their interdependent rights and duties. He found it difficult to

¹ For an account of Wakefield's achievements and proposals, see the interesting "Life of Edward Gibbon Wakefield," by Dr. Garnett and Wakefield's own "Art of Colonisation."

persuade any but the middle classes to emigrate with the capital so necessary to his scheme; labourers and paupers were indeed willing to better their lot, but they had neither capital nor, sometimes, skill in farming, so that they were, if possible, worse off in the colonies than at home. Land was granted sometimes free of cost, at other times at a very trifling price, and the result was that every man was a landowner, and labour was either extremely dear and inefficient, or absolutely lacking; hence the new settlers were poor and the land remained undeveloped.

Wakefield proposed that the Government, at first the Imperial authorities, should retain sole control over the land and fix a fair price at which it could be acquired by settlers with capital. The money thus raised was to be used for developing the country by constructing roads and bridges. At first, only the lands around the seat of government would be settled, and as mechanics and traders came in to supply the wants of the new society, the value of the settled lands would automatically increase, and fresh land in more outlying districts could be placed on the market. The immigration of labourers was to be encouraged; if necessary the cost of their passages could be advanced, but as they had no money it would be necessary for them to hire themselves out to capitalists. They would receive good wages and could soon save money enough to enable them to buy land at an easy rate. It was expected that the community, not being purely agricultural, would attract the upper classes also, and thus a new England, in every possible respect like the old, would spring up in the colony.

The Radicals did not approve of the scheme because it perpetuated class distinctions, and many of the reformers objected to it because it gave the Imperial Government sole control of the waste lands of the colony. However, it justified itself wherever it was adopted in its entirety, both in South Australia and in parts of New Zealand, and when the Canadian authorities superseded the Imperial Government in the control of the waste lands, they retained the

essential parts of Wakefield's system. Two things were necessary for the success of the scheme: a "sufficient price" must be fixed, and there must also be a desire on the part of the right sort of people to make their homes in the new land. Sudden accessions of population, such as the "gold rush" to Australia in the middle of last century, necessarily disorganized the whole arrangement. Wakefield's scheme was a good foundation, but he did not pretend that it was anything else.

Mention has been made in a previous chapter of the meeting between Wakefield and Robert Gourlay at Montreal in the August of 1838.¹ There is no reason to suppose that Wakefield deceived Gourlay or that Gourlay deceived himself as to the first origin of the Wakefield system. Gourlay was a voluminous writer, and it is notorious that his "Statistical Abstract" was designed with a view to attract settlers to Upper Canada. The two men had much in common, but poor Gourlay's thirst for information was misunderstood, and his plans of colonisation ran directly counter to the interests of the ruling classes in the colony. It is very probable that Wakefield's acquaintance with Gourlay's views only dated from the time when the story of his persecution became known through his attack on Lord Brougham in 1824, but Wakefield was a far abler man, and developed the other's ideas beyond the point first conceived by Gourlay.

After mentioning the Special Report, Durham proceeds to give an account of the actual system in vogue in British North America. Since the year 1796 the disposal of public land in the United States had been governed by one uniform law, unchangeable save by Congress, and never materially altered; this law "renders the acquisition of new land easy, and yet by means of a price restricts appropriation to the actual wants of the settler. It is so simple as to be readily understood; it provides for accurate surveys, and against needless delays; it gives an instant and secure title; and it

¹ *Ante*, p. 167.

admits of no favouritism, but distributes the public property amongst all classes and persons upon precisely equal terms. That system has promoted an amount of immigration and settlement of which the history of the world affords no other example, and it has produced to the United States a revenue which has averaged about half a million sterling per annum, and has amounted in one twelvemonth to above four millions sterling, or more than the whole expenditure of the Federal Government."¹ It was quite otherwise, however, in British North America. There the Crown Lands Department, responsible only to the Treasury and the Colonial Office in England, had had full sway; recently the Provincial Assemblies of New Brunswick and Upper Canada had gained some right to control the disposal of the lands in their respective colonies, but it was little more than nominal. "The Imperial Parliament only interfered when it enacted the unhappy system of Clergy Reserves."

"In the North American colonies there never has been any system. Many different methods have been practised, and this not only in the different colonies, but in every colony at different times, and within the same colony at the same time. The greatest diversity and the most frequent alteration would almost seem to have been the objects in view. In only one respect has there been uniformity. Everywhere the greatest profusion has taken place, so that in all the colonies, and nearly in every part of the colony, more and very much more land has been alienated by the Government than the grantees had at the time, or now have, the means of reclaiming from a state of wilderness; and yet in all the colonies, and in some of them to an extent which would not be credited if the facts were not established by unquestionable testimony, the surveys have been inaccurate, and the boundaries, or even the situation of the estates, are proportionately uncertain. Everywhere needless delays have harassed and exasperated applicants, and everywhere, more or less, I am sorry, but

¹ Report, pp. 148, 149.

compelled to add, gross favouritism has occurred in the disposal of public lands."¹

It is indeed a deplorable condition of affairs which Durham here describes. Of its truth in all essentials there is unfortunately no doubt, for the witnesses upon whose testimony the charges are based were drawn from all parties, ranks and districts in British North America. He adds that under this system not only did the Crown Lands Department not yield a revenue, but that for some years the expenses exceeded the income. This, although serious, was of small account to Durham in comparison with the disastrous results the system produced on the civilisation of Upper Canada. During his tour in that province Durham coasted along the American shores of Lake Erie and saw Buffalo in the distance. There is no indication that he knew any other American city, but he listened to the boasts of his numerous American guests, and to the "concurrent statements of numerous eye-witnesses, who had no motive for deceiving me," as he curiously phrases it,² and he seems to refer to Haliburton in the mention of "one of your Majesty's chief functionaries in Nova Scotia," whose work bore out his assertions as to the backward condition of the province, although a different cause was assigned for it.

"On the American side all is activity and bustle. The forest has been widely cleared. Every year numerous settlements are formed, and thousands of farms created out of the waste; the country is intersected by common roads; canals and railroads are finished, or in the course of formation; the ways of transport and communication are crowded with people, and enlivened with numerous carriages and large steamboats. The observer is surprised at the number of harbours on the lakes, and the number of vessels they contain, while bridges, artificial landing-places, and commodious wharfs are formed in all directions as soon as required. Good houses, warehouses, mills, inns, villages, towns, and even great cities, are almost seen to

¹ Report, p. 149.

² *Ibid.*, p. 151.

spring out of the desert. Every village has its school-house and place of public worship. Every town has many of both, with its township buildings, its book stores, and probably one or two banks and newspapers; and the cities with their fine churches, their great hotels, their exchanges, court-houses, and municipal halls of stone or marble, so new and fresh as to mark the recent existence of the forest where they now stand, would be admired in any part of the Old World."¹ In these glowing words the Report describes the civilisation of the Frontier States of the Union, and states that, by reversing the picture, the condition of British America can be equally well realized.²

Durham's constant harping on this theme of the superiority of the United States, which he himself never saw, is remarkable. Wakefield did make two or three more or less hurried trips through that country, and his eagerness to repair the undoubtedly backward condition of the Canadas may account for the above description. Of a certainty this section of the Report was inspired by Wakefield, and he was an adept at conveying impressions by the use of picturesque language. We are driven to believe that there is some intentional exaggeration here by the absence of any reference to the true cause of the extraordinary development of the Western States of the Union. They were settled by emigrants not only from the populous eastern States, which were, comparatively speaking, close at hand, but also from England. It was easier to get to Canada *via* New York than by the St. Lawrence, and many of those who would have gone to Canada were persuaded into remaining by the blandishments of the American land agent so familiar to readers of "Martin Chuzzlewit." The American industrial system was based on credit to an extent inconceivable to-day, and the Canadas were still reeling under the shock received when American

¹ Report, p. 150.

² For the dark side of the picture of American civilisation, see Head's "Three Letters to Lord Brougham and Vaux."

banks, and even States, repudiated their debts. Capital and credit were easy to obtain in the United States prior to 1837, and this must be remembered when contrasting the condition of the two sides of the frontier.

The Report compares the two countries in three places where they touch—New Brunswick, Lower Canada, and Upper Canada. Major Head told Durham that, when travelling near the frontier line of the State of Maine and New Brunswick, he could always tell on which side he was by the obvious superiority of the American settlements in every respect. This has been referred to before; it may be sufficient to point out that, if Head knew the precise position of the frontier so clearly in 1838, he was probably the only person in the world who did, for it was not settled till 1840. Such careless statements, however picturesque, are not evidence; the condition of New Brunswick was lamentable enough without exaggeration. It was improving, although slowly, and that too in face of enormous difficulties; capital and population were both scarce, and even the enterprising Yankee, without capital or credit, was helpless. Head is on safer ground when he speaks of the condition of the roads in the Eastern Townships being so uniformly bad that settlers preferred to travel between any two points in them by making use of the roads in Vermont. This was not the fault of the settlers but of the unfortunate racial question in Lower Canada, under which the Eastern Townships were persistently starved by the Assembly. The inhabitants were largely Americans, and had more affinity with the Vermonters than with Lower Canada proper, from which they were separated by a belt of swamp and forest. The difference between Upper Canada and the opposite shore of the lakes was said to be less perceptible but not less in fact, and one proof is alleged that in some parts of the frontier the difference in the value of land north and south of the line was sometimes 1,000 per cent.; “between Upper Canada and the States of New York and Michigan it is notoriously several hundred

per cent." Mr. Hastings Kerr, of Quebec, the premier authority on the subject, gave the price of wild land in Vermont as five dollars an acre, and in the adjoining British townships as one dollar, and at that price much was unsaleable. The system under which Crown lands were granted is blamed, and obviously with justice, for this unsatisfactory state of affairs.

Another regrettable circumstance is the considerable re-emigrations from the Canadas to the United States, amounting, according to Mr. Bell Foryth of Quebec, to 60 per cent. ; and even according to Mr. Hawke, the chief agent for emigration, to nearly 17 per cent. of the British settlers in Upper Canada. A similar thing happened in the Maritime Provinces. Durham states emphatically that the main cause of the very inferior value of land in the British colonies, and the re-emigration of immigrants is the mismanagement in the disposal of public lands. Then there follows a series of statistics and extracts from the evidence of witnesses to show the appalling condition of the provinces. Lands had been granted to United Empire Loyalists and their children, to Governors, Government officials and others, all of whom had either neglected to improve them or had sold them in despair to speculators, and so increased the evil. The only people who made any effort to develop their holdings in the Eastern Townships were the American squatters on the wild lands of others.

In Upper Canada huge tracts of land had been granted in this way, and had been bought up by rich members of the Councils. In Lower Canada the law against excessive grants was actually set at defiance by the assistance of the Attorney-General, who drew up an instrument which was publicly sold in Quebec, whereby grants made to a "leader and associates," who were "men of straw," could be conveyed to the leader alone ; the principal intermediate agent was the assistant surveyor-general. Another instance of mismanagement was the way in which the lands were bestowed which had been promised to the militiamen who

fought in the war of 1812. In despair at developing or even obtaining their lands, in the face of the trouble of making out their claims, the militia sold their rights to speculators for a very few pounds, and thus "there has been the maximum injury to the province with the minimum of benefit to the militiamen."¹

Attempts had been made to reform the system of free grants. In 1827 the practice was to cease in Upper Canada and a price to be demanded, but only 100,317 acres had been sold, while 2,000,000 acres were granted free in respect of antecedent claims. A commissioner was appointed at this time to control the disposal of Crown lands at a salary of £500 a year. In ten years the surveyor-general handed over to him about 300,000 acres, while he retained control of the rest to satisfy claims to free grants. In November, 1826, instructions were sent by the Treasury to Lower Canada, and these were confirmed in 1831 and further enforced by Lord Goderich; henceforth free grants were to be replaced by a system of sale, but again, as antecedent claims demanded 640,039 acres, and only 450,469 acres had been sold, the scheme had not been a success, and there were still unsettled claims to more than 1,000,000 acres. Lord Goderich had ordered that, to restrict appropriation, a short time only should be allowed in which to pay the purchase-money; but in 1832 Lord Aylmer allowed this to be disregarded. In 1837 Lord Glenelg required that ready money should be paid at the time of sale.

Even when a man had bought his land he was not sure of his rights, for the early surveys had been careless, and the boundaries of the lots were frequently hopelessly unsettled, or wrong. In one case the greater part of a lot was found to be occupied by a lake. Hence there were frequent disputes as to title between squatters and purchasers, and the state of affairs can be realized by the evidence of Mr. Kerr, who stated that in one township, Inverness, three out of the four lots granted to a Captain Skinner were

¹ Report, p. 163.

decided not to be in existence. Not the least cause of complaint was the more or less useless formality and delay before a patent could be obtained, even when the purchase-money had been paid; it issued by the joint efforts of eight or nine officials, and the time varied from six weeks to eight years. In one instance a man was held in prison for debt a fortnight by his creditors while his patent, for which he had already made all necessary payments, was sent to the Governor at Niagara for his signature; until it arrived the debtor could not raise the small sum required.

Little reference need be made to the question of the clergy reserves, which has been dealt with elsewhere. A curious mistake, but one of which the clergy were guiltless, according to Durham, was made in laying out the township, and not only did a reservation of one-eighth of the total land of the township become one-seventh, but in Lower Canada a further reservation of one-seventh was made at each fresh sale or grant.¹ Hence in Upper Canada £45,000 and in Lower Canada £16,000 of the price hitherto received for the reserves belongs to the State. At the end of his remarks on the land system Durham refers again to Prince Edward Island. The state of things in that island, and their origin, have been already explained. As Durham himself found, it was easier to blame the policy which alienated the whole 1,400,000 acres in one day than to devise means for undoing the evil which should satisfy all parties.

It is scarcely necessary to say that Durham's information as to the land system was gathered from the evidence taken by Hanson and Wakefield before their commission. Buller, the nominal chief commissioner, took little part in this matter, being employed elsewhere, but he and

¹ The Act 31 Geo. III. c. 31 ordered that in respect of all grants made by the Crown a quantity equal to one-seventh of the lands so granted should be reserved for the clergy—*i.e.*, one-eighth of the whole.

Wakefield agreed on the question. The credibility of the statements made is hardly contestable if the diverse character of the different witnesses is considered. Possibly, almost probably, Wakefield intentionally painted things in Canada as black as possible, but without that they were bad enough. As in the case of Upper Canada, we have apparently a first draft of the sections written out by Wakefield, and revised by Wakefield and Durham, probably with the assistance of Buller and Hanson.

Closely following the account of the land system is a description of the methods by which the population of the colonies was recruited by emigrants. The first census of those arriving at Quebec by sea was taken in 1831; from that date till 1838, 263,089 arrived in Canada, the most being in the year 1832 (51,746), and the smallest number, as might be expected, was in 1838, when, on account of rumours of trouble, only 4992 arrived. It is a terrible story of criminal negligence that Durham has to tell. Packed out of all proportion in crazy, ill-found, and foul-smelling emigrant ships, the wretched men, women, and children often landed at Quebec in a sick and dying state. The cholera outbreak of 1832-4 was traced to them, and finally a quarantine station was formed at Grosse Isle, a few miles below Quebec. The newcomers who had not sufficient energy to push on to Upper Canada lingered about Quebec and Montreal as casual labourers; often the parents were carried off by disease in the foul dens to which they betook themselves if they had a little money and did not wish to sleep out on the wharf side. They made no attempt to save, thinking that they were sure of work at good wages all the year round, and in the long Canadian winter they were a heavy burden on the charity of the people of Quebec. To remedy this, the provincial parliament imposed a tax on emigrants from the United Kingdom, and out of the proceeds a fund was provided which secured shelter, medical attendance, and the means of further transport to destitute emigrants.

The conveyance of emigrants was regulated by the Passengers Act (9 Geo. IV.), which was amended in 1835. By this Act the names, ages, sexes, and occupations were to be entered on a list certified by the Customs officer at the outpost, and delivered by the captain with the ship's papers to the officer of the Customs in Canada. Systematic evasion took place, for although lists were handed in they were seldom correct, the object being to evade the tax on emigrants by entering grown-up persons as children. Again, each passenger was supposed to have sufficient provisions for the voyage, but the same bag did duty for many. The pauper emigrants and those from Ireland fared worst; not only was the food supplied to the former unsuitable for the voyage, but they were often put on short rations before the vessel had been at sea many days. As they had only salt pork, beef, and biscuits, without the sugar, coffee, oatmeal, and flour, they frequently developed contagious fevers, and the food and water they actually did get were not always of the best quality. These parish emigrants were the worst kind, both physically and morally; they seldom knew a trade, even farming, and only swelled the ranks of the poor in Quebec. An exceedingly mean kind of extortion was commonly practised by the captains of the emigrant ships sailing from Ireland. Although they knew that the average passage was six weeks, and sometimes longer, they persuaded the emigrant that stores for three weeks or a month would be sufficient. Having laid in a stock of provisions, the captain then sold them at a profit of 400 per cent. to the wretched emigrant who had consumed all his own, and frequently robbed him of his last shilling. The cheaper vessels were exceedingly ill-found, and commonly had an insufficiency of water casks.

The Passengers Act also provided for the conveyance of doctors on the emigrant ships,¹ but "the majority of these were unlicensed students and apprentices, or apothecaries' shopmen, without sufficient medical knowledge to

¹ Report, p. 184.

be of any service to the emigrants, either for the prevention or cure of diseases." In one case the surgeon of an Irish vessel professed to have cured of bowel complaints and catarrhs the only sick on the vessel, but the surgeon at Grosse Isle, Dr. Poole, found below forty cases of typhus fever, of whom nine were in bed. Another emigrant-ship surgeon gravely diagnosed a strain of the arm as a fracture of the tibia and fibula, both of which are bones in the leg. Durham admits that it was agreed that things were improving somewhat since the Act was amended in 1835, but, although there were agents appointed to secure the execution of its provisions at both ends of the voyage, the instructions they received were too vague to be of much use. This difficulty which the emigrant found in procuring information, either in Upper or Lower Canada, was frequently the reason for his re-emigration to the United States. At Quebec and Montreal emigrant societies had been formed, but their chief object was to facilitate the progress of the poorer emigrants to the United States, although they had by their exertions introduced some improvement into the unhealthy mid-passage.

The Report gives a striking instance of the utter want of system in the account of the "Commuted Pensioners." In 1832 and 1833 about 3000 of these old soldiers, who had commuted their pensions for a lump sum down and a grant of land, arrived at Quebec. As, however, they anticipated the dispatch sent to provide for their reception, they were unable for some time to receive their money. Some of them, when they received it, gave themselves up to drunkenness and debauchery, never attempting to settle on their lands; others, who were more prudent, found it utterly impossible to discover the situation of their grants. The result was that many sold their rights for a mere trifle, and within a short time after their arrival were beggars and hangers-on in the principal towns; not one in three attempted to settle their lands, and not one in six remained in 1838 on them. Many of the pensioners

perished during the two years of cholera, and others had disappeared, but the situation of those who survived called loudly for relief, as they were useless as farm-labourers or as domestic servants, and at the commencement of every winter they were thrown on private charity. In the upper province numbers were only saved from absolute starvation by being fed at the expense of the Provincial Government. Durham advised that their pensions be restored to them, and that the next Government-managed scheme of emigration should be carried out on more scientific principles.

This subject of emigration naturally interested Wakefield and his patron very greatly, and they were disgusted at the arrangements which the Report of the Agent-General for emigration praised. In the face of the terrible scenes of the cholera years we can understand their objection to a passage in the printed Report for 1838, which, referring to the emigration of 1832, says: "These great multitudes had gone out by their own means and disposed of themselves through their own efforts, without any serious or lasting inconvenience . . . a practice which appeared to thrive so well spontaneously." Lord Durham seems to have intentionally provided the evidence, as given above, for the contradiction of another passage from the same Report. Speaking of the officers employed by the Colonial Department to secure the carrying out of the Passengers Act, it says: "Their duty is to give ease and security to the resort to the colonies, and to promote the observance of the salutary provisions of the Passengers Act. In all that relates to emigration they constitute, as it were, the poor man's friend. They take notice whether the ship offered for his conveyance is safe, and fit for its purpose; they see to the sufficiency of the provisions on board; they prohibit overcrowding; they make every effort to avert or frustrate those numerous and heartless frauds which are but too constantly attempted at the moment of departure upon the humbler class of emigrants. . . . Every

effort is made for the ease and safety of their transit." This is an admirable summary of what should be the duties of emigration agents, but there is considerable evidence to show that they were but indifferently performed. It was essential to the success of the Wakefield scheme of colonisation that emigrants should receive every assistance from the Government, and although Durham does not actually advocate State-aided emigration, he gives many indications that he approved of it. To him "the chief value of those colonies to the Mother Country consists in their presenting a field where millions even of those who are distressed at home might be established in plenty and happiness."¹

The sub-section on emigration belongs to section four, and the sources and authorities are largely the same. The evidence quoted was given before the Crown Lands Commission, and probably was selected by Wakefield himself with a view to emphasising the difference between the true and the false method. Of course, we are not justified in taking the extreme instances quoted as true types of the emigrant-ship, but even so their existence was a reproach to the nation. Contemporary evidence is strong upon the point of the utter unsuitability of many would-be emigrants, and the proof is clinched by the very different system under which the great emigration of the fifties was carried out, when the Durham Report had drawn attention to the abuses, and the Special Report had pointed to the true method of settlement. It is scarcely worth while to do more than mention Haliburton's criticism upon the Report's interpretation of certain clauses in the Passengers Act.

¹ Report, p. 190.

CHAPTER XIX.

THE DURHAM REPORT: RECOMMENDATIONS.

BEFORE giving an account of Lord Durham's scheme for the future government of British North America, as outlined in the Report, it may be as well to remember that this differed considerably from Roebuck's scheme, which he found unworkable, and also from the scheme he gave hints of in the proclamation of October 9th. The ministry¹ affected to believe that Durham never had a scheme until Charles Buller arrived in England, and the Report was finally drawn up; the fact is, Durham had a very definite scheme when he left British America. He still hoped to satisfy the British of Montreal without destroying absolutely the French nationality in Lower Canada. Charles Buller was not converted to the union when he left Canada, for a Montreal paper accused him of language which leaves no doubt of his sympathies.² Buller was stated to have expressed an opinion in favour of the rebels, when on the steamer *St. George*, just after Durham left, calling them an injured and oppressed people, and asserting that the so-called loyalists had caused both the first and the second rebellion by tyrannising over their opponents and goading them into rebellion. This agrees more with the tone of the dispatch of August 9th than with Durham's actual recommendation. Buller's opinion was said to have been shared by young Ellice.

There are, moreover, strong grounds for thinking that Durham and Wakefield were still in favour of, at least,

¹ Cf. Sanders, p. 443.

² *Montreal Herald*, November 14th, 1838.

Sir Charles Grey's scheme.¹ In the Proclamation of October 9th reference was made to a measure which Durham hoped to bring before the Imperial Government, under which "all the advantages of a representative system, unaccompanied by the evils that have hitherto proceeded from the unnatural conflict of parties," would be secured to Lower Canada. To offer the scheme in the Report as the fulfilment of such a pledge would be simple mockery, and we must believe that Durham's scheme actually provided for the subdivision of Lower Canada under a general scheme of confederation, so as to give the French the superiority in those districts of Lower Canada where they were almost the sole inhabitants. Chance has preserved a letter which strongly corroborates this view, and which professes to give the scheme which Durham proposed to present for acceptance. The writer was an inhabitant of Montreal, and he names as his authority one of the Commissioners, who may have been² Adam Thom. The plan³ is as follows:—

"1. The name of Canada is to be superseded as being intimately connected with misgovernment, party spirit and strife, and the two provinces are to be re-divided into the provinces of Quebec, Montreal, Kingston, and Toronto, which with the provinces of New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland, will in one federal union go under the name of British North America. The Queen's title will then be, 'Queen of the United Kingdom of Great Britain and Ireland and British North America.' British North America will then have a Secretary and office in Downing Street to itself, and be governed by a viceroy, as Ireland now is, with this difference: that we shall have a separate federal Legislature nearly independent of the Mother Country.

"2. Each province to have a Legislature to itself for

¹ See *ante*, p. 154.

² Cf. *ante*, p. 197, and Roebuck's letter in *The Spectator* of November 17th, 1838.

³ Quoted from *The Observer*, December 24th, 1838.

the management of local matters, and the whole country is to be divided into municipalities, answering to the townships of the States, where they shall elect their own officers. The people are also to elect Commissioners of Education in each municipality, and trustees of each school, who are to be overseen by inspectors having the status of puisne judges, and they in their turn to be under a superintendent, with the rank of chief justice, and removable only for misconduct, so that education may go on independently of party and factious strife. The Clergy Reserves, the Jesuits' estates, and all funds for education to be thrown into a fund, and distributed to each school district in the country in proportion to its population; said school district to be compelled by law to raise at least an equal amount, so that education shall be free to every child in British North America.

"3. Each province to send two or more members to the Imperial Parliament in London. Steam navigation to be established on a large scale between Great Britain and British North America, and our country here to be opened up from Halifax to Sandwich, by railroads and improvements of navigation.

"This is a magnificent plan, and I think will be likely by its grandeur to bear down all opposition. It would also, in my opinion, work well, as there would not be a French Canadian majority in any province but that of Quebec, and that district has never participated in the disturbances. Besides, as the people would have the sole control and management of their own affairs, and as improvements of all kinds would be carried on rapidly and prosperity abound, no one would have reason to complain."

This was indeed a magnificent plan, and we cannot easily understand how a statesman like Durham could abandon it for the miserable makeshift scheme of a legislative union of two provinces, whose peoples had no more affinity than water and oil. It is true that he compares

the case of Louisiana, but there had been no rebellions there; the French population was small in Louisiana, and was soon swamped, while there was not the slightest likelihood that the English settler would prefer the poor soil of Lower Canada to the rich lands of the upper province. The bribe which bought the adhesion of the Upper Canadian reformers—responsible government—had no attractions for the habitant or notary, who saw, as he thought, his nationality destroyed at the bidding of his hereditary enemies, the Montreal merchants. Thirty years of the unequal yoke did not prevent the French from eagerly grasping at the scheme of confederation whereby the partial control of their beloved Quebec was restored to them. In 1839 they would undoubtedly have preferred to control half of the lower province if they could not have the whole; at the present day there are signs that even under confederation the British of Montreal are becoming somewhat restive from the neglect with which they fancy their port is treated in comparison with Quebec by a French Legislature. There is now no question of nationality. Merchant and habitant are alike proud of the great Dominion, but there is no community of interests between a commercial city like that of Montreal, which is truly American in its progressiveness, and the quaint, interesting, sleepy old French town of Quebec. When the last British settler shall have turned his back on the Eastern Townships—and that will be ere many years have passed—it will be time to consider whether Durham's first plan may not still, with suitable modifications, be the best solution of the difficulty. It holds good equally with Upper Canada, for Kingston and Toronto were already, in 1839, the capital of different civilisations, and soon the population and wealth of Ontario will entitle it to become two States, one industrial and the other agricultural.

Perhaps we can find the key to Durham's hesitation in that peculiar British disinclination to attempt too much

at once. His ideal was the federation of all the provinces; he admits that; but he did not know how far the taint of disaffection had spread among the French, and perhaps misinterpreted their unwillingness to trust him as having been due to a consciousness of guilt. Again, the plan of *The Times*,¹ and so of the Tories, was to set the Englishmen of Upper Canada as a guard over the Frenchmen of Lower Canada, and the Montreal merchants who had influence with *The Morning Chronicle* had preached legislative union in season and out of season. His own instructions bade him consider a scheme for the federal union of the two provinces, and he saw that there was at present no chance of arranging a satisfactory division of the joint revenue, or of the French Assembly consenting to complete the canal system of the St. Lawrence. Upper Canada was bankrupt, and Lower Canada thoroughly disorganized; she would not have felt the dismemberment, or perhaps have only looked upon it as an unpleasant but necessary operation. There was, however, one drawback to the compound division and federation scheme. The Maritime Provinces only appreciated the theory, but they steadily disapproved of its being carried out in Durham's way, under which the central authority received all power and revenue, while the provincial Legislature remained a sort of glorified County Council. Durham was quite sure he was right, and the fathers of confederation practically adopted his view.

Mr. Garnett believes that the adoption of the plan for a legislative union—"the jewel of the Report," as a spiteful pamphleteer calls it—was due to Wakefield.² It is impossible to do more than conjecture, but the supposition is a likely one. Durham had great confidence in Wakefield's judgment, and Wakefield could be at once practical and a dreamer. Perhaps the union was not so valuable a jewel as appears at first sight, but it was an

¹ Issue of January 3rd, 1838.

² "Life of Wakefield," p. 179.

eminently practical and temporary solution. Durham had to reckon with the British parliament. Roebuck's letters to *The Spectator* prove that the "Friends of Canada" had come to look upon the High Commissioner as hopeless from their point of view, and they would have resisted the dismemberment scheme. The Tories were not enamoured of federation, and they would have had a good excuse in the obvious reluctance of the colonists themselves. Melbourne¹ and his ministry had no scheme at all, certainly none they could hope to carry in the face of opposition, and Durham showed his practical good sense in at once disarming his opponents by adopting the Tory principle of the Union, while he bought off the hostility of Upper Canada with his proposal to grant responsible government. Of course the French were not considered, but after their late rebellion it was evident that the system of the Constitutional Act could not be re-established. Durham's term of office in Canada had taught him that Lower Canada must become English if the other colonies were to remain British, and even while he recommended the legislative Union, he preached the federation of all the colonies. The Report pointed out its advantages so strongly, while it declared that it must only come about by consent of all parties, that the actual realization of his project was only a question of time.

Durham prefaces his recommendations with a brief summary of the reasons for immediate action. Both in Upper Canada and Lower Canada the need for remedial measures is equally pressing. In Lower Canada it was impossible to re-establish the old Constitution—neither party would tolerate that; nor could it be expected that the present system of forcible subjugation could be permanent. In Upper Canada the continuance of the many

¹ As late as December 23rd, 1838, Melbourne wrote to Russell that the only course was to continue the suspension of Lower Canada's Constitution, and leave the other provinces as they were.—Sanders, p. 444.

practical grievances, and the determined resistance to such a system of responsible government as would give the people a real control over their own destinies, were calculated to make men desire the adoption of Republican institutions under which the United States, whom they envied, had prospered. For the moment he believed that all the discontented, especially in Upper Canada, looked forward with considerable confidence to his mission, but it was the last effort of their exhausted patience, and if it was in vain they would "wait in sullen prudence the contingencies which may render the preservation of the province dependent on the devoted loyalty of the great mass of its population."¹

With respect to the other provinces, the evils were not so imminent because the feeling of attachment to the Mother Country was very strong. This feeling indeed existed among all the British inhabitants of the different colonies, and might form the basis of a safe, honourable, and enduring connection if a wise and firm policy were adopted by the Imperial Government. But even this feeling might be impaired, and a blind reliance on the all-enduring loyalty of our countrymen might be carried too far. It was not politic to cramp their resources and to allow the backwardness of the British provinces everywhere to present a melancholy contrast to the prosperity of the United States. It was no true loyalty to hide the truth from the Queen, who was as able as she was willing to provide the remedy, and the noble confidence of the colonists in trusting to Great Britain for redress was worthy of reward. They had believed that there is a power in British institutions to rectify existing evils and to produce in their place a well-being which no other dominion could give. "It is not in the terror of the law or in the might of our armies that the secure and honourable bond of connection is to be found. It exists in the beneficial operation of those British institutions which link the utmost development of freedom

¹ Report, p. 192.

and civilisation with the stable authority of an hereditary monarchy, and which, if rightly organized and fairly administered in the colonies, as in Great Britain, would render a change of institutions only an additional evil to the loss of the protection and commerce of the British Empire.”¹

This passage strikes the keynote of the new colonial policy which Durham had learned from Molesworth and Wakefield, and had transformed and ennobled by his own genius. He saw a vision of a wider empire than that of fleets and armies. “Government by consent” was to join in one Briton and Frenchman and to give a new meaning to “la nation Canadienne.” He was not the man to blame national aspirations, but he would turn them into a more profitable channel, and suggest to their upholders a nobler and more useful field of effort. It was possible, he admitted, to hold the Canadas by force at present, but such a barren sovereignty was not worth the cost of its maintenance, and by a little effort and by wise conciliation a sister nation might be created alongside of the United Kingdom—a source of strength instead of weakness, and the ever-present nightmare of a possible American intervention would pass away—as it has done—for ever. Durham deserves all credit for facing and laying the spectre of annexation. British statesmen feared it, even when they most affected to despise it, and the British of Canada, as Durham saw, “protested too much” in their hatred of everything American. They certainly preferred British institutions, but they had never yet enjoyed them to the full, and they cannot be blamed for thinking that the freedom of a Republic was preferable to the slavery of a monarchical colony.

Perhaps Durham is nowhere seen to better advantage than in this section of the Report, and not least readable of all are the pages where he discusses the chances of American intervention. He scouts the idea that there

¹ Report, p. 194.

could be any real sympathy between the aggressive, enterprising Americans and the habitants of Lower Canada. For them to understand the real object of the latter was at once to condemn it, and it was only the fancied analogy between the grounds of quarrel in 1837 and 1776 that ever won a momentary sympathy for the French in the United States. In Upper Canada the danger was more real because the natural ties and affinity were stronger than in Lower Canada. There were Americans in Upper Canada, and Canadians in the different States of the Union and intercourse was very common. Again, there was the question of the Irish, of whom 40,000 were said to be in the militia of New York State. At present Durham's policy had secured the almost unanimous approbation of the people of the United States, and, therefore, there was little to be feared from American sympathy with the rebels. Any recent aid the latter had received was due to the national animosity arising from past wars or to "those undisguised projects of conquest and rapine which, since the invasion of Texas, find but too much favour among the daring population of the frontiers."¹ The Federal Government at Washington, however, would not be strong enough to resist the popular will, if any sudden turn of affairs should again revive a strong and general sympathy with insurrection in Canada, and there were mutual provocations on each side of the frontier; for the loyal people of Canada were irritated at the constant damage and terror caused by invasions from the opposite shore.

But not only was immediate action necessary in view of the possible change in the present friendly attitude of the Washington authorities, but it was also imperative for the true interests of British North America. Capital and population were both leaving the distracted provinces. From Lower Canada the emigration was not permanent—at least, to any great extent—but it was otherwise in Upper Canada. It was said that many settlers were crossing over

¹ Report, p. 198.

from the western and London districts, and a body of the reforming party had openly avowed their intention of emigrating from political motives. There was actually in existence the Mississippi Emigration Society, for the purpose of facilitating emigration from Upper Canada to the new State of Iowa. However, at present, very few even of those who were loudest in their protestations of departure had actually left the country and some of those who had left were said to have returned. Durham cannot agree with the dominant party in rejoicing at the departure of the discontented, for not all the reformers were disloyal or turbulent men, and he instances the case of a large proprietor from Trinidad who had left Upper Canada, where he had taken no very prominent part in politics, solely because of the unrest in the colony. Other cases were given, not only of capitalists but also of squatters, and even the descendants of the Dutch around Niagara were showing a disposition to quit the country.

In the face of such a deplorable situation Durham relied on "the efficacy of reform in the constitutional system by which these colonies are governed for the removal of every abuse in their administration which defective institutions have engendered."¹ The problem was to bring the influence of a vigorous public opinion to bear on every detail of public affairs, and to secure harmony instead of collision between the various powers of the State. "It needs no change in the principles of government, no invention of a new constitutional theory, to supply the remedy which would, in my opinion, remove the existing political disorders. It needs but to follow out consistently the principles of the British Constitution, and introduce into the government of those great colonies those wise provisions by which alone the working of the representative system can in any country be rendered harmonious and efficient. We are not now to consider the policy of establishing representative government in the North American colonies. That has

¹ Report, p. 204.

been irrevocably done ; and the experiment of depriving the people of their present constitutional power is not to be thought of. To conduct their government harmoniously, in accordance with its established principles, is now the business of its rulers ; and I know not how it is possible to secure that harmony in any other way than by administering the government on those principles which have been found perfectly efficacious in Great Britain. I would not impair a single prerogative of the Crown ; on the contrary, I believe that the interests of the people of these colonies require the protection of prerogatives which have not hitherto been exercised. But the Crown must, on the other hand, submit to the necessary consequences of representative institutions ; and, if it has to carry on the government in unison with a representative body, it must consent to carry it on by means of those in whom that representative body has confidence.”¹

In these simple words Durham laid the foundations of the new colonial policy of Great Britain ; he did not seem to realize the immense revolution he was initiating. To him “government by consent” was as natural in Canada as in England, and that was to him sufficient justification for the proposal. He was a Benthamite in that he preferred the interest of the whole to that of the part, whether the part was the oligarchies at Toronto and Quebec or the whole “nation Canadienne” ; he was greater than a Benthamite, for he looked beyond the present to the heritage of the unborn. Canada was an inheritance that must be preserved for the British race, but it was a race which knew no ties of blood, but only of common allegiance to one ruler. It is a mistake to consider that Durham for one moment desired to wipe out, in the sense of the Montrealers, “la nation Canadienne” ; he only wished to show the French that, by the logic of past events, they were politically British, and that, however modified to suit their local needs, the type of the new Canadian nation must be British too. Nevertheless

¹ Report, pp. 204, 205.

the Canadian nation had all the rights which Durham, as a Radical, believed to be an Englishman's birthright. He had no thought of innovating; in his own eyes he merely carried to its logical conclusion the policy begun by others, and from a halting-place where it had already delayed too long.

Durham just does pause, not to defend a new proposal, but to answer possible objections to his view of the necessity of the course he would pursue. The principle he advocated was commonly received in England, and had not been challenged since the time of William III. If colonial legislatures had stopped supplies and preferred impeachment with too great a frequency, it was only because they could not show their want of confidence in the officials in a milder way and yet attain their end. He did not approve of any of the other plans that were suggested to end the difficulty. Some in the colonies proposed an elective Executive Council, but that was inconsistent with monarchy, and would really, under the nominal authority of the Crown, deprive the people of one of the great advantages of an hereditary monarchy. He maintained that every purpose of popular control might be combined with every advantage of vesting the immediate choice of advisers in the Crown, were the colonial Governor to be instructed to secure the co-operation of the Assembly in his policy, by entrusting its administration to such men as could command a majority; and if he were given to understand that he need count on no aid from home in any difference with the Assembly, that should not directly involve the relations between the colony and the Mother Country. "The change might be effected by a single dispatch containing such instructions; or, if any legal enactment were requisite, it could only be one that would render it necessary for every official act of the Governor to be countersigned by some public functionary. This would induce responsibility for every act of the Government, and, as a natural consequence, it would

necessitate the substitution of a system of administration by means of competent heads of departments for the present rude machinery of an Executive Council. The Governor, if he wished to retain advisers not possessing the confidence of the existing Assembly, might rely on the effect of an appeal to the people, and if unsuccessful might be coerced by a refusal of supplies, or his advisers might be terrified by the prospect of impeachment. But there can be no reason for apprehending that either party would enter on a contest when each would find its interest in the maintenance of harmony; and the abuse of the powers which each would constitutionally possess would cease when the struggle for larger powers became unnecessary. Nor can I conceive that it would be found impossible or difficult to conduct a colonial government with precisely that limitation of the respective powers which has been so long and so easily maintained in Great Britain."¹ In after years Durham's meaning was interpreted by Wakefield's acts to be that the Governor should rule through the leaders of the majority in the Assembly, not that those leaders should rule through the Governor; but the true theory of "responsible government" according to the Durham Report has been too often forgotten.

Anticipating Croker's shriek,² Durham says:³ "Perfectly aware of the value of our colonial possessions, and strongly impressed with the necessity of maintaining our connection with them, I know not in what respect it can be desirable that we should interfere with their internal legislation in matters which do not affect their relations with the Mother Country. The matters which so concern us are very few. The constitution of the form of government—the regulation of foreign relations, and of trade with the Mother Country, the other British colonies and foreign

¹ Report, pp. 206, 207.

² "The fundamental error is this: they forget that Canada is a *province*—a *colony*. They measure it by a scale of doctrines which are applicable only to a national and independent sovereignty."

³ Report, p. 207.

nations—and the disposal of the public lands, are the only points on which the Mother Country requires a control. This control is now sufficiently secured by the authority of the Imperial Legislature; by the protection which the colony derives from us against foreign enemies; by the beneficial terms which our laws secure to its trade; and by its share of the reciprocal benefits which would be conferred by a wise system of colonisation.” Durham thought that “a perfect subordination on the part of the colony, on these points, is secured by the advantages which it finds in the continuance of its connection with the Empire.” We have now drifted far from his ideal, but there are signs of a change in men’s feelings as to the adequacy of mere “silken ties.”

Regarding the results of his proposal to place the control of their home affairs in the hands of the colonists themselves, Durham has no fears; if they make bad laws or choose improper leaders, they will suffer most. The existing system, maintained by a costly military force, only allowed a Governor or colonial secretary to confer posts upon one set of people rather than upon another, and the persons selected were seldom remarkable for ability, while they could not be removed without “inflicting a kind of brand on their capacity or integrity.” Nor should it be urged against the new system that its advocates in the past had been men suspected of a preference for Republican institutions. Past expressions of disappointment were not to be taken too seriously, for everywhere among the English population he had found a devoted attachment to the Mother Country. “The British people of the North American colonies are a people on whom we may safely rely, and to whom we must not grudge power.” The new policy might indeed be carried out by the unaided power of the Crown, and an assurance that it would be henceforth adopted would dispel the great mass of discontent in Upper Canada not arising from a feeling of personal irritation. However, he thought that the colonists would feel more secure if all the provinces were united; then,

preferring their complaints with one voice, they would find no one in England venturing to run counter to their wishes, except on points involving the few Imperial interests which it is necessary to remove from the jurisdiction of colonial legislation.

Having laid down the great principle which was in future to regulate the relations of Great Britain and her colonies, Durham does not spare the latter in indicating their faults. He advises that, to prevent the possibility of that political jobbery and log-rolling which so thoroughly disgusted him in colonial politics, the consent of the Crown shall be made necessary before any money vote can be moved; he would strengthen the prerogative of the Monarchy for the real protection of the people, as it "is constantly exercised in Great Britain." He also advises the devolution of some of the powers now possessed by the provincial legislatures upon a number of municipalities throughout the colonies. The legislatures would never willingly surrender their powers, but it was necessary for political purity and good management that the power of local assessment, and the application of the funds thus collected should be confided to the new municipalities, and that the establishment of the latter should be a part of every colonial Constitution. The Crown must zealously defend them against any encroachments of the Assembly until the people had realized their value. "The establishment of a sound and genuine system for the management of the lands and the settlement of the colonies is a necessary part of any good and durable system of government."

Then Durham returns to the greatest of all the problems—the future of Lower Canada. Sixteen pages are filled with a discussion of the past, present, and most suitable future for the lower province, and he ends where he began in practically re-stating the problem. Durham sympathised with the French of Lower Canada as an "oppressed nationality," but his stay in Canada convinced him that

their hopes could not come to fruition unless by the sacrifice of the destiny of his own people, and he made his final decision in accordance with his creed. Less ruthless than Wakefield in his disappointment, Durham seriously thought that he might even persuade the French to acquiesce in the extinction of their national aspirations by the offer of a more glorious citizenship ; but in 1840 their wounds were too recent, and the exultation of their foes too evident for this. During the long night of their hopes, however, the French gradually learned that they too could contribute something of their past to the glories of the future Canadian nation. When the British in Canada consented to become also Canadians, the French could also take upon themselves a dual nationality. They discovered that not the renunciation but the sublimation of their cherished ideal—"la nation Canadienne"—was asked ; and, after all, the Norman peasantry in Quebec are not of a very different race from the Anglo-Danish farmers of Ontario and the Maritime Provinces.

"I entertain no doubts as to the national character which must be given to Lower Canada ; it must be that of the British Empire ; that of the majority of the population in British America ; that of the great race which must, in the lapse of no long period of time, be predominant over the whole North American continent. Without effecting the change so rapidly or so roughly as to shock the feelings and trample on the welfare of the existing generation, it must henceforth be the first and steady purpose of the British Government to establish an English population, with English laws and language, in this province, and to trust its government to none but a decidedly English Legislature."¹ Durham's hopes have been vain, for Quebec to-day is more French than in 1839, in everything but racial animosities. Having stated the problem thus clearly, the Report proceeds to discuss it. After a few words of sympathy with the French for the coming loss of that nationality

¹ Report, p. 212.

"which is after all an inheritance," and deprecating too severe a punishment, Durham defends his refusal to subject the British minority to the French majority on the ground that the British race will eventually outnumber the French, and that, under the existing condition of things, the occupation by the French of the lower St. Lawrence debars the British of Upper Canada and the Townships from the natural channel for the trade which they have created. Any future influx of settlers must be British, and they would not submit to the injustice. Even if the Imperial Government will not give the British the control they will agitate for it until successful, backed by their increasing numbers and by the sympathy of their race both in Great Britain and in the United States. If abandoned by the Imperial Government, they will turn to the neighbouring Republic for aid, and, when they are incorporated with it, the fresh swarms of settlers from all parts of the Union will speedily overpower every other race by superior numbers and activity.

But there is no hope for French nationality, whether under British or American rule; they are an isolated fragment of an ancient colonisation in an Anglo-Saxon world, and, if severed from the Empire, they will only remain part of an English confederation, or, "after keeping up a wretched semblance of feeble independence for a few years," will be merged in the American Union, being "exposed more than ever to the intrusion of the surrounding population. The only question is whether the small number of French who now inhabit Lower Canada shall be made English under a Government which can protect them, or whether the process shall be delayed until a much larger number shall have to undergo, at the rude hands of its uncontrolled rivals, the extinction of a nationality strengthened and embittered by continuance."¹ Durham was a false prophet, but, as his forecast was based on the information he next supplies as to the existing state

¹ Report, p. 215.

of the French in Lower Canada, we cannot be surprised. Lafontaine he knew, but Jean Baptiste he did not know, and the renaissance of civilisation in Lower Canada unfortunately at that time wore the form most calculated to disguise its true power and achievements. We know from Richardson,¹ and also from hints in the Report, that Durham quite expected that in due course the Canadas would become independent, although he hoped to prevent, or at least minimise, the shock of parting, and he was thinking of the day when the British of Montreal would be in power.

According to him, the educated French Canadian was kept apart from the Empire by difference of language and manners, and the aspiring ones could not be employed by the Government in sufficient numbers, even if they received fair treatment, from a similar reason. For the habitant the case was as bad. If he remained in his native village, the weight of economic forces made him poorer and poorer, for the pressure of population could only cause to deteriorate into poverty the present state of rude and equal plenty. If he wandered abroad, he would lose his racial traits among an English population, or he would sink into being a member of a class of labourers in the employ of English capitalists; in either case it would appear that the French Canadians are doomed, in some measure, to occupy an inferior position, and to be dependent on the English for employment, a position aggravated tenfold by a spirit of a jealous and resentful nationality, separating employer from employed. The time is past for the mode of life and division of property prevailing among the French, however good its effects at present may be. There is not enough land left contiguous to the seigneuries to keep pace with the rapidly increasing French population, if it is to be cultivated in the old manner. According to a Report from a committee of the Assembly in 1826, it is stated that since 1784 the population of the seigneuries had quadrupled,

¹ "Eight Years in Canada," p. 36, and Report, p. 229.

while the number of the cattle had only doubled, and the quantity of land in cultivation had only increased one-third. "Were the French Canadians to be guarded from the influx of any other population, their condition in a few years would be similar to that of the poorest of the Irish peasantry."

For a long time it seemed as if Durham had correctly outlined at least one phase of the habitants' future. Despite the commutation of the tenures, the younger men were driven into the mills of New England in large numbers, for neither in Quebec nor elsewhere north of the frontier could they find a means of subsistence; still, even among the Puritans, the priest followed his flock and formed a bond of union among them. When they died in the strange land he buried them, but all who could returned with their savings to die. Patriotic leaders mourned over the forced migrations, and priests feared the effect of the factory life on their simple parishioners. Schemes were formed of a new Quebec on the Red River, but, like the half-breeds of Batoche, they found that isolation was not possible in North America for long. The fate of Louis Riel was harder than that of Papineau, but his rising was the last false step on the part of any section of the French. They remain a minority in Manitoba, jealous of their rights, but able to maintain them because their support is generally indispensable to the success of the British party leaders. Similarly in Ontario; the French have, step by step, thrust forward their outposts from western Quebec, and by their frugality and clannishness have secured their hold. They find in Ontario the industrial life they formerly saw only in New England, and the French farmer, who could barely wrest a livelihood from the barren fields of Quebec, is content with lands the more aggressive Englishman has abandoned for the fertile corn-fields of the north-west. Perhaps they may not be always the minority even in Ontario, but at present they are unmolested, and are even powerful by reason of their votes. In the future, education may raise the condition of the habitant and teach him to abandon his limpet-like preference

for his native land. In time the French will develop party divisions as the British have already done, but the process will be slow and checked by the broad cleavage of religion. Meanwhile, the two races live side by side, proud of their common fatherland. The French were ever a people with great powers of assimilating and transforming all that was best in the Roman and the Teuton who came among them, and there are already signs that the old process is at work. It is to their interest to retain the Imperial connection, under which they have flourished so greatly, and the genius of their abler leaders has seized upon the old war-cry of the Tories and claimed for the French membership in the new Imperial race. Side by side French and British Canadians struggled up the Nile, and side by side they fell at Paardeberg. It required the genius of a Frenchman to conceive a new criterion of nationality wider than the blood-tie, but the rest of the Empire is learning it, and finding new motives for union.

But when Durham wrote this was in the future ; he had hoped to conciliate, but had been repulsed. The French were then holding aloof in their ruin, and from the distance he saw only a nation "destitute of all that can invigorate a people," with its own language, it is true, but with neither history nor literature, and yet cut off from all enjoyment of English literature. He says that the only literature familiar to them was that of a nation from which they had been separated for eighty years, and still more by the changes which the Revolution had wrought in the whole political, moral and social state of France ; even their newspapers were written by men imported from old France, and, although members of the race most addicted to the drama, they could not support a national stage, on a continent where almost every town, great or small, has an English theatre. Many of the French already realized their hopeless position ; the English language was gaining ground, and in Quebec were ten times as many French children learning English as there were English learning

French. Justice and policy alike demanded that the alteration of the character of the province should be at once entered upon and firmly though cautiously followed up. To trust the French, in their present state of mind, with the control of the province would only be facilitating a rebellion, and thus the policy suitable both for the present and the future is the same. Durham is unjust to the French; they were not without a history even in Canada, as Louisbourg and Fort Duquesne had proved, and they were successfully re-creating their literature. It is and was, perhaps, of a somewhat peculiar type, but we must not forget that French literature sailed back to France in 1760-63 with the officials and soldiers of the most Christian king, and only reluctantly returned. We know now how unfair it was to assume that all the French were ripe for rebellion, but Durham felt himself compelled to justify a policy which could not be justified on any ground but that of superior strength. The only argument for the union was that, if it did not come about peaceably, it would be carried by force; the true solution—confederation—was not possible in 1840.

Durham had spoken the fatal sentence, but he made every attempt to mitigate its severity. He would not hear of Head's scheme; to join Montreal to Upper Canada and then govern the rest of the province despotically was no solution, nor could it help provoking the interference of the United States, if they set up a semblance of representative government which gave power to the British minority. In time the discontent of the French would affect the English also, and there was nothing in the history of past attempts at irresponsible government to justify a repetition of the experiment. Such a system could not last, and would only result in a weak and irresolute conduct of affairs by the Governor and his Council from fear of criticism. Nor would he agree to a gerrymandering of the constituencies or a rearrangement of the franchise qualification. "It is not in North America that men can be cheated by an

unreal semblance of representative government, or persuaded that they are out-voted when they are in fact disfranchised. The only power that can be effectual at once in coercing the present disaffection and hereafter obliterating the nationality of the French Canadians is that of a numerical majority of a loyal and English population, and the only stable Government will be one more popular than any that has hitherto existed in the North American colonies."¹

He next attempts to correct a misapprehension among the British as to what really happened after the purchase of Louisiana in 1804.² On the single fact that in the Constitution of Louisiana it is specified that the public Acts of the State shall be "in the language in which the Constitution of the United States is written" it has been inferred that the Federal Government in the most violent manner swept away the use of the French language and laws, and subjected the French population to some peculiar disabilities which deprived them, in fact, of an equal voice in the government of their State."³ Durham again pleads for consideration to be shown to the French Canadians by giving an interesting account of how Louisiana was Americanised by a combination of fair treatment and superior ability on the part of the new settlers. By his own showing, however, the success attained had not been very great, and he does not mention that the circumstances were very different. Louisiana was a tiny colony of slave-holding aristocrats which had never enjoyed representative institutions; the French of Lower Canada were a fairly numerous nation of peasant farmers, whose aspirations had once been encouraged till, after half a century of growth, they became inconvenient. Durham attempted to maintain the view that, as in Louisiana, the more ambitious Canadians would learn English and take an interest in the affairs of

¹ Report, p. 221.

² Is it a mere coincidence that *The Morning Chronicle* had compared Louisiana and Canada?

³ Report, p. 222.

their new and larger nationality, and their peculiar language and manners would pass away as those of the New York Dutch had done. He forgot for the moment the two rebellions and their legacy of hate.

There were two kinds of union possible, he says—federal and legislative. When he first landed in Canada he had been in favour of the former, under which there would be two local Legislatures and one superior one to manage their common affairs ; however, he had discussed this scheme, as part of a plan for the general government of all the colonies, with deputations from the lower provinces and with various leading individuals and public bodies in both the Canadas, and had found it unworkable at present. The proposed federal Constitution would be cumbrous to work, and the central authority weak, unless the local authorities surrendered more of their powers than they were apparently willing to do. Moreover, so long as the colonies were liable to be moulded according to the pleasure of the supreme authorities at home, there was lacking the inducement to federation supplied by the necessity of conciliating the pretensions of independent States to the maintenance of their own sovereignty. However, he was pleased to find the leading minds of the various colonies strongly and generally inclined to a scheme that would elevate their countries into something like a national existence. He thought it would be a tendency of a federation sanctioned and consolidated by a monarchical Government, gradually to become a complete legislative union, and that thus, while conciliating the French of Lower Canada by leaving them the government of their own province and their own internal legislation, he might provide for the protection of British interests by the general Government, and for the gradual transition of the provinces into an united and homogeneous community. But the time for transition was past in Lower Canada ; no French Assembly would work in harmony with a central federal authority, and tranquillity could only be restored by subjecting the province to the

vigorous rule of an English majority, and the only efficacious Government would be that formed by a legislative union.

Durham gives some figures to prove that in United Canada the British of Upper Canada, 400,000 in number, reinforced by the 150,000 British of Lower Canada, would have a majority over the French of 100,000. He put the British population far too high, as the event proved, but he rightly saw that immigration would soon redress any balance adverse to his scheme. He hoped that the French would realize that they were fairly out-voted—for he would not alter the existing constituencies and give an equal number of representatives to each province—and that, recognising the futility of any attempt at opposition, would acquiesce in their new state of political existence. He would not like to subject the French to the British of Lower Canada, but from a majority emanating from so much more extended a source they would, he thought, have no oppression or injustice to fear.

Most of their new fellow-citizens would not have come into hostile relations with them, and so would bear no feelings of animosity towards the French. However, Durham proposed to guarantee to the Roman Catholic Church of Lower Canada its endowments, and only to allow the existing laws to be altered by the united Legislature, as was stipulated in 1707 with regard to Scotland. The union would secure to Upper Canada the objects of its desire. There would be no more disputes about the revenue, and the province which was placed beyond the possibility of locally jobbing the surplus revenues would gain as much as the province which would acquire a means of paying the interest of its debts. This would not be unjust, as Lower Canada would share in the benefit of the canals, which could be completed and become a source of profit. There would also be a saving in the cost of carrying on the government, which would be more efficient, and the responsibility of the Executive would be secured by the increased weight which the representative

body of the united province would bring to bear on the Imperial Government and Legislature.

He was inclined to go further, and ask if a legislative union of all the provinces would not be equally advisable. It would, in a greater degree, answer all the purposes of the smaller scheme, and United Canada, under good and responsible government, and protected by the British Empire, might in some measure counterbalance the preponderant and increasing influence of the United States. He did not think a colonial legislature thus strong and thus self-governing would desire to abandon the connection with Great Britain. "On the contrary, I believe that the practical relief from undue interference which would be the result of such a change would strengthen the present bond of feelings and interests, and that the connection would only become more durable and advantageous by having more of equality of freedom and of local independence. But, at any rate, our first duty is to secure the well-being of our colonial countrymen; and if in the hidden decrees of that wisdom by which this world is ruled it is written that these countries are not for ever to remain portions of that Empire, we owe it to our honour to take good care that, when they separate from us, they should not be the only countries on the American continent in which the Anglo-Saxon race shall be found unfit to govern itself."¹

This was the expression of a generous confidence, which history has thoroughly justified. The Empire owes a debt to Lord Durham that it has ill-repaid; he raises to a higher level than mere commercialism the question of the relations between the various parts of the Empire, and tries to inspire men with a sense of that duty which made him accept a post so visibly offered for his ruin, that he might preserve to the nation, as the inheritance of future ages, the wide lands of the West. The colonies have a right to the best form of government that we can give them and to the best

¹ Report, p. 229.

chance of industrial progress, because their inhabitants are a part of the nation which the seas cannot dissever: they shall no longer be the preserves of corrupt politicians and place-hunters, but sharers with the people of England in the liberties so lately won. For the future Durham was content to wait; perhaps he was looking forward to the new ideal of empire—a federation of free and self-governing communities allied on equal terms.

It was the gift of Durham, shared in common with Wakefield, that he could offer to every man the arguments most fitted to appeal to him, and so here he attempts to reassure the timid. There is no danger of separation, he says, for the new scheme will call out all that is best in the colonial politician. No longer would he be a demagogue in a dependency, and forced to rely solely on agitation for influence. He will henceforth be a leader in a community whose voice counts in the councils of the Empire. He will find larger objects and aims, and the more sordid and petty quarrels which made up colonial politics will sink out of sight. At present the American spirit is the only one the colonists are influenced by, since they have no nationality, and the spirit of Great Britain cannot act from its distance. If it be true that these troubles are fomented by a few designing men, the union of all the provinces will afford a means of turning their ambitions into more honourable channels by raising up a Canadian nationality, whose destinies they may aspire to mould, uninfluenced by alien pressure. Adam Smith's sagacity traced to its true source the alienation of the United States from the parent nation: we must provide some scope for what he calls the "importance" of the leading men of the colony, beyond what he forcibly terms the present "petty prizes of the paltry raffle of colonial faction." They would no longer look with envy and wonder at the great arena of the bordering federation, but see the means of satisfying every ambition in the high offices of the judicature and Executive Government of their own Union.

Nor would the colonies themselves gain less by federation; the superintendence of a central Executive would in almost every case improve the working of the present existing departments in the colonies. It was hard to consider why the colonies were divided into separate provinces, since they are all part of one Empire, with common laws and common interests; their relations to the Empire and to foreign nations are the same, and in case of a war—for example, in the matter of the boundary dispute between Maine and New Brunswick—they would all suffer together. Even a quarrel over the fisheries of Nova Scotia would lead most probably to the invasion of Upper Canada. Their internal relations afford equally strong motives for union; the Post Office should be managed by one authority, and certainly the disposal of the waste lands in the several provinces. It would be advantageous to the colonies to possess a common fiscal system, a common currency, and a common banking and monetary system. The existing public establishments in the different provinces would best be altered by the united Legislature, and a similar course should be pursued with regard to the judicial system, as a general appellate tribunal could then be formed for all the North American colonies.

But all these interests are small in comparison with those that would be called into existence by the union. Not only would the colonies be brought into closer intercourse, but the success of steam navigation in shortening the Atlantic passage bade fair to bring Europe nearer to them also. Lord Durham mentions a dispatch from Glenelg which reached him on his return to England. It announced that the Government were determined to establish steam communication between Great Britain and Halifax, and instructed him to turn his attention to the formation of a road between Halifax and Quebec. Durham says that, had he remained in Canada, he would have had both the will and the power to carry out the scheme, but unfortunately, the respective provinces had no means of concerting

common action; they stood to one another in the relation of foreign States without diplomatic relations. Their only common meeting-ground was the Colonial Office, the place just where the interests of all parties would have the least means of being fairly and fully represented, and where the minute local knowledge necessary for such a matter would be least likely to be found.

He considered that the completion of any satisfactory communication between Halifax and Quebec would, in fact, produce relations which would render the union of the provinces absolutely necessary. The idea of a railroad was quite feasible, as the cost would not be so great as in England, and the general contour of the country was favourable. He instances the case of the Utica railroad, in the north of New York State, to prove that the severe American winter did not affect travelling by rail. Quebec would be brought within ten or twelve days steaming from Ireland, and there would be communication between the colonies and Great Britain, even in winter; Halifax would become a great trading port and the landing-place of passengers to British North America. The completion of the St. Lawrence canals and of the railroad from Quebec to Halifax would render the colony independent of the mouth of the St. Lawrence in bad weather, but would cause it to be more than ever necessary that the provinces should be united. The union would also be most beneficial to the two smaller provinces of Newfoundland and Prince Edward Island. It is to be regretted that Durham could not prevent the disgraceful Ashburton Treaty, which tore from New Brunswick the lands through which such a railroad must pass; her claim to most of the territory she demanded has since been proved to be indisputable by the discovery of the old French map, but when the Inter-colonial Railway was finally made, it was deprived of its strategic value by the consequent necessity of running its trunk line through the ceded territory. Any direct all-British line cannot start therefore from Halifax, the most

suitable port, and other, if possible even more ambitious, projects have been designed by Canadian engineers to bridge the Strait of Canso, and make the terminal point in Cape Breton.

As a final argument in favour of the union of all the provinces, Lord Durham reproduces a letter from Edward, Duke of Kent, Queen Victoria's father, in which is discussed the question of the union, according to the plan of Chief Justice Sewell, to whom he writes. It is dated November 30th, 1814, and the scheme is slightly different to Durham's. As amended by the Duke of Kent, the scheme provided for a central Assembly of thirty members and a Governor-General; under him there were to be two or at the most four Lieutenant-Governors, Executive Councils, and Assemblies. The Duke wavered between the creation of two provinces by the amalgamation of the Canadas on the one side and of the Maritime Provinces on the other, or at any rate of uniting Nova Scotia, Prince Edward Island, and Cape Breton. Curiously enough Newfoundland was left out of the proposed federation, of which the only result was the annexation of Cape Breton to Nova Scotia in 1820. The Duke of Kent died too soon for the success of the scheme, and he seems to have yielded to the representation that the population was too small and the distances too immense for a union to be feasible at that moment. Durham, however, does not mention these facts as an obstacle, but he personally found the drawback in the reluctance of the Maritime Provinces to surrender to a central body the control of their revenues; he thought that reluctance might be overcome by the erection of a system of municipalities. However, in view of the unwillingness of the Maritime Provinces to accept the scheme, he does not think it wise to press it, as there are, save in Lower Canada, no exceptional circumstances to justify such a step. But the state of the two Canadas is such that parliament must decide on their future government without delay.

He advises that a Bill be immediately brought into parliament for repealing the Act 31 Geo. III. c. 31, restoring the union of the Canadas under one Legislature, and reconstituting them as one province. The Bill should also provide for the future admission of any other of the colonies into the union on such terms as may be agreed on. A parliamentary Commission should decide upon the new electoral districts, arranging them as near as possible with a view to representation in proportion to population, for no other scheme would be fair. However, to prevent the confusion and danger likely to ensue from attempting to have popular elections in districts recently the seat of rebellion, the Governor should receive temporary power to suspend certain writs by proclamation, stating specifically the ground for his action. The same Commission should devise a plan for the erection of bodies for local government, subordinate to the Legislature, but protected from it by having their powers defined by an Act of the Imperial Parliament. An improved general Executive and a Supreme Court of Appeal for all the North American colonies should be established, but the other laws and institutions of the colonies to remain unaltered until the united Legislature dealt with them, the existing endowments of the Roman Catholic Church in Lower Canada alone being guaranteed by the new Act.

Durham's treatment of the Legislative Council is unsatisfactory; the reason was that he had already burned his fingers by following Roebuck's advice as to the abolition of the Legislative Council. In Nova Scotia Roebuck's scheme of a combined Executive-Legislative Council had not been a success, and had only just been reformed, on the petition of the inhabitants, when Durham offered his plan of federation coupled with the abolition of the Legislative Council, but apparently without the proposal for responsible government. He found, however, that the politicians of the Maritime Provinces preferred the surer remedy of a responsible to a powerless Executive Council,

as did those of Upper Canada. His actual scheme of responsible government falls far short of the demands of the Maritime reformers, but it is an improvement upon them. Only in Lower Canada, among the followers of Papineau, did he find any desire for an elective Legislative Council, and he saw how useless a remedy it would prove. However, he objected with Fox to any comparison between the House of Lords and the Legislative Council, but—strange omission in an otherwise most comprehensive Report—he suggests no remedy beyond a vague hope that parliament may “revise the Constitution of the Council, and by adopting every practicable means to give that institution such a character as would enable it, by its tranquil and safe but effective working, to act as a useful check on the popular branch of the Legislature, preventing a repetition of those collisions which have already caused such dangerous irritations.”¹ Durham had become a Whig and did not know it.

He proposes that the administration of his plan for the management of the waste lands should be confided to an Imperial authority, his reasons being given in the Special Report. All other revenues of the Crown should be surrendered to the united Legislature on the concession of an adequate Civil List. The responsibility to the united Legislature of all officers of the Government, with the exception of the Governor and his secretary, should be secured by every means possible to the British Constitution. The Governor, as the representative of the Crown, should be instructed that he must carry on his government by heads of departments, in whom the united Legislature shall repose confidence; and that he must look for no support from home in any contest with the Legislature except on points involving strictly Imperial interests. The independence of the judges should be secured by giving them the same tenure of office and security of income as exist in England. No money votes should be allowed to originate

¹ Report, p. 241.

without the previous consent of the Crown. In the same Act should be contained a repeal of past provisions with respect to the Clergy Reserves, and the application of the funds arising from them.

He elsewhere (*i.e.*, in the separate Report) recommends a system of measures expressly framed after mature deliberation for the promotion of emigration on the greatest possible scale. These measures would subject neither the colony nor Great Britain to any expense whatever, but would benefit both. "The objects, at least, with which the plan has been formed are to provide large funds for emigration, and for creating and improving means of communication throughout the provinces; to guard emigrants of the labouring class against the present risks of the passage; to secure for all of them a comfortable resting-place, and employment at good wages immediately on their arrival; to encourage the investment of surplus British capital in these colonies by rendering it as secure and as profitable as in the United States, and to promote the settlement of wild lands and the general improvement of the colonies; to add to the value of every man's property in land; to extend the demand for British manufactured goods, and the means of paying for them, in proportion to the amount of emigration and to the general increase of the colonial people; and to augment the colonial revenues in the same degree."¹

The peroration proper contains perhaps some of the most eloquent thoughts in a Report which is never dull and never lacking in passages calculated to play upon the emotions. After a brief vindication of the trustworthiness of his facts and the suitability of his recommendations, he admits that, in view of the number and magnitude of past errors, and the wretched economical state of the colonies, his scheme almost amounts to a revolution; but, after all, it is only the substitution of a scientific system for none at all, and he "has presumed that the Imperial Government

¹ Report, p. 242.

and Legislature will appreciate the actual crisis in the affairs of these colonies, and will not shrink from any exertion that may be necessary to preserve them to the Empire."¹ He is hopeful rather than confident of the success of his scheme, but action is necessary. "The deep-rooted evils of Lower Canada will require great firmness to remove them. The disorders of Upper Canada, which appear to me to originate entirely in mere defects of its constitutional system, may, I believe, be removed by adopting a more sound and consistent mode of administering the government. We may derive some confidence from the recollection that very simple remedies yet remain to be resorted to for the first time. And we need not despair of governing a people who really have hitherto very imperfectly known what it is to have a Government."¹

He does not recommend emigration on a large scale, as a remedy for the existing state of affairs, since the country holds at present no attraction for settlers; if, however, his measures shall restore peace, a large influx of British would prevent a recurrence of the trouble, and one year's immigration would redress the adverse balance if he had miscalculated the forces of the friends and enemies of the British connection in the united Legislature. "It is by a sound system of colonisation that we can render these extensive regions available for the benefit of the British people. The mismanagement by which the resources of our colonies have hitherto been wasted has, I know, produced in the public mind too much of a disposition to regard them as mere sources of corruption and loss, and to entertain with too much complacency the idea of abandoning them as useless. I cannot participate in the notion that it is the part either of prudence or of honour to abandon our countrymen when our government of them has plunged them into disorder, or our territory when we discover that we have not turned it to proper account. The experiment of keeping colonies and governing them well ought at

¹ Report, p. 243.

least to have a trial, ere we abandon for ever the vast Dominion, which might supply the wants of our surplus population, and raise up millions of fresh consumers of our manufactures, and producers of a supply for our wants. The warmest admirers and the strongest opponents of Republican institutions admit or assert that the amazing prosperity of the United States is less owing to their form of government than to the unlimited supply of fertile land, which maintains succeeding generations in an undiminishing affluence of fertile soil. A region as large and as fertile is open to your Majesty's subjects in your Majesty's American dominions. The recent improvements of the means of communication will, in a short time, bring the unoccupied lands of Canada and New Brunswick within as easy a reach of the British Isles as the territories of Iowa and Wisconsin are of that incessant emigration that annually quits New England for the far West. I see no reason, therefore, for doubting that by good government, and the adoption of a sound system of colonisation, the British possessions in North America may thus be made the means of conferring on the suffering classes of the Mother Country many of the blessings which have hitherto been supposed to be peculiar to the social state of the New World."¹

Such is a brief outline of Lord Durham's Report, "one of the ablest State documents ever penned"; but no *résumé* can convey an adequate idea of its statesmanlike proposals or of the majestic sweep of its periods, which creates out of the normally dry State paper one of the finest examples of virile English prose. It is easy to carp at the Durham Report; many slips in facts and false conclusions have been pointed out in this sketch, but they do not touch the fundamental truths. Let us admit to the full that there is not a single original thought in the Report which can be ascribed to Lord Durham alone: this does the Earl less than justice, but what does it amount to? The schemes

¹ Report, p. 244.

for the disposal of the waste lands and for encouraging emigration are Wakefield's—true ; but they are no more his than Robert Gourlay's, and probably owe something to Lord Durham's hand. The idea of federation can be traced back to Sewell, and beyond Sewell, but the scheme Durham propounds is that which is being realized more and more every day. The Report advocates no mere weak federation of loosely connected and semi-independent provinces, but a legislative union which would make the old provinces simple geographical divisions as they are fast becoming to-day. It is possible to carry back the claim for responsible government to the pamphlet of Ogle Gowan in 1830 ;¹ we know it was the watchword of the advanced reformers of Upper Canada, and we shall probably not be far wrong in attributing Durham's conversion to a belief in its essential justness to his meetings with men like Young of Nova Scotia. But the theory, as it left his hands, was no mere demagogue's assertion of popular rights : it was the reasoned conclusion of the statesman seeking the best remedy for a problem which had baffled all previous attempts to solve it. Durham would have hotly denied the insinuation that he was creating a *fainéant* Governor to represent a *fainéant* Queen. To him, Queen and Governor alike had well defined rights which they must not scruple to exercise. His scheme is only possible in a State where political education is widely if not universally diffused, but to make it possible is to take the wiser course. And so it is with every subject Durham handles : it gains in value by its passage through that wonderful mind of his, the visible fruits of which were so few in his lifetime, but the harvest yet continues with undiminished splendour and richness.

This sketch will not be complete without a very brief account of the way in which Lord Durham's recommendations were carried out or neglected. When Lord John

¹ The phrase first appeared in a petition of 1829. Cf. MacMullen, p. 370.

Russell introduced the Union Bill on June 3rd, 1839, he said he could not accept the theory of responsible government as Lord Durham proposed to apply it to the colonies, but he compromised, and sent a dispatch on the vexed question to Poulett Thompson. This, the latter explained to the Legislature of Upper Canada, conveyed Her Majesty's commands to administer the government of these provinces "in accordance with the well understood wishes and interests of the people." This rather ambiguous sentence was the first sanction the principle of responsible government received in the Canadas; in 1848 the system was introduced into Nova Scotia, and in 1854 into New Brunswick. On June 13th, 1841, the first meeting of the united Legislature took place. The Union Bill had been carried at last, but it differed in many respects from Lord Durham's ideal. There was to be one Legislative Council and one Assembly; the Council was to consist of not fewer than twenty-eight natural-born or naturalised subjects of Her Majesty, with a life tenure, *quamdiu se bene gesserint*. The Speaker of the Council was to be appointed and could be removed by the Governor, and ten members, including the Speaker, constituted a quorum. The constituencies of Lower Canada were to be reduced to the number in Upper Canada. The qualification for membership of the Legislature was fixed at *bonâ-fide* possession of an estate worth £500. The English language was the only one to be used in the written or printed proceedings of the Legislature. The passing of any Bill to repeal 14 Geo. III. or 31 Geo. III., or respecting the government of Quebec, the dues and rights of the Church of Rome, the allotment of the clergy reserves, the endowments of the Church of England and its internal discipline or establishment, or affecting the toleration of any creed, and the Queen's control of the waste lands of the Crown, was subject to the necessity of being laid on the table of parliament before the Queen's assent could be declared; and if at any time within thirty days the Queen was requested to withhold her assent, she must do so.

Other clauses provided for the levying of Imperial and colonial dues, for the appointment of a Court of Appeal, for the administration of the civil and criminal laws, for the fixation of the Court of Queen's Bench within Upper Canada, for the regulation of trade, and for the consolidation of all the revenues of the colonies into one fund, to be appropriated for the public service of Canada. Out of this fund a Civil List of £45,000 was to be paid to the Queen for the expenses of government and the legal system, and £30,000 for certain officials and pensions; all other revenues were surrendered to the united Legislature. The debts of the two provinces were to be assumed by United Canada. All appropriations were to originate with the Governor, who should initiate the same; also all new taxation, which the Assembly should then discuss. The formation of townships and the appointment of township officers were vested in the Governor.

This was the Constitution which Poulett Thompson had to administer. Luckily for him Mackenzie and Papineau were in exile, and every other political leader too bewildered to grasp the situation. There was no attempt made to hold fair elections in Lower Canada. British mobs and French mobs struggled openly about the booths with disastrous results to the number of French members who were returned. The habitant was too cowed to resist the autocratic Governor, and Robert Baldwin again lost his nerve at the critical moment. He had accepted office under Poulett Thompson, but became suspicious and resigned on the very eve of the first meeting of the Legislature. Poulett Thompson had attempted to form a sort of "ministry of all the talents," but Baldwin would not work with W. H. Draper, the talented Solicitor-General of Upper Canada. However, Poulett Thompson was ever resourceful, and he eventually managed to eliminate or reduce to powerlessness every member of the Assembly he had cause to fear. He secretly laughed at the notion of being responsible to anyone but himself and

Lord John Russell, who was now Colonial Secretary, and as the Canadians, through sheer weariness of agitation, allowed him to have his own way, the new Governor rapidly improved the hitherto wretched state of affairs. A system of municipal government was established, and the shareholders of the Welland Canal were bought out; new roads and bridges were built in all directions and Poulett Thompson, now Lord Sydenham, even essayed to solve the question of the clergy reserves. He was too premature, for the scheme was disallowed. He had carefully avoided to place power in the hands of extreme men of either side, and, of course, neglected utterly the claims of Lafontaine and the French. He was considering a plan which Roebuck describes as the creation of a system of "rotten boroughs" to prop up the influence of the Executive, when he died from the effects of a fall from his horse in the autumn of 1841.

The Tories were now in power in England, and Sir Charles Bagot was sent out to succeed Lord Sydenham. He carried relentlessly into practice what Sydenham had merely professed, despite the murmurs of the Tories in Canada. However, Bagot was so eager to maintain an impartial attitude that he accepted a Reform ministry under Baldwin and Lafontaine; the Liberals of the two provinces had coalesced, and, in the absence of Sydenham, were irresistible. Bagot resigned in the following year, and was succeeded by Sir Charles Metcalfe, who had previously held office in Jamaica and Hindostan, and, like Head at an earlier date, was looked upon as a "tried reformer," although, again like Head, he was a very moderate Liberal. Wakefield had returned to Canada during Bagot's term of office, and had become the member for the French county of Beauharnois. The part he played in securing the admission of Lafontaine to office is not very clear, but he soon quarrelled with the reformers, who, in his opinion, not only held antiquated views on the question of colonisation, but were also too much inclined to exalt

their own rights as ministers at the expense of the Governor. Metcalfe was probably quite justified, under Russell's dispatch, in refusing to admit the claim of Baldwin and Lafontaine to dispose of all offices in his gift, but the Colonial Office was fearful of a second crisis in Canada. For some time the province was without a ministry, and Metcalfe was on the eve of being recalled, when he appealed to the constituencies, and defeated the reformers, in the true spirit of Durham's own theory. Wakefield defended Metcalfe; he was his secret adviser in Canada, and we can therefore understand how Wakefield, at any rate, had interpreted Durham's words. When he returned to England he wrote pamphlets and articles in support of Metcalfe. In one, "A View of Sir Charles Metcalfe's Government in Canada," he describes the Governor as a man "whom God made greater than the Colonial Office," and as "a Christian gentleman of whom it is enough to say that nothing would persuade him to take an unfair advantage; he can hardly persuade himself to take a fair one." In another, an article which appeared in *Fisher's Colonial Magazine* for July, 1844, he expounds his own, and presumably Durham's, views on the question of responsible government.

Draper formed a Conservative ministry, and the capital was removed from Kingston to Montreal. Metcalfe resigned in 1845, and Lord Cathcart succeeded him. Sir Allan MacNab secured the payment of a lump sum to the loyalists for their losses during the rebellion; Draper even assented to the payment of £10,000 as compensation for the losses suffered in the lower province. This caused a storm, and when Lord Elgin, Durham's son-in-law, succeeded Cathcart in 1847, Draper resigned office to Lafontaine and Baldwin, who had just won the election. Naturally they were in favour of the compensation of the French; but when Elgin assented to the Bill, the Tories broke into a riot, mobbed the Governor, and fired the Parliament House at Montreal. Elgin was threatened with recall by the British, but he stood firm, and the capital was

removed from Montreal to Toronto and Quebec alternately, until the Queen finally decided upon Ottawa as the most suitable place. Out of the evil came good: the Tories of Upper Canada had gradually become Conservatives, and were rapidly gaining power there. Seeing that the French alliance benefited the reformers, they formed the British North American League in 1849, to carry out Durham's scheme of confederation; Canada would then be two provinces again, and the French would be powerless for evil. The growth of Conservatism was helped by the split between the "Clear Grits," as the extreme Radicals were called, and the Moderates who followed Baldwin. The reformers sustained another loss when "Representation by population" became the cry in Upper Canada, which had by immigration become the more populous section of the united provinces. The French claimed their rights under the Act of Union, and at last the two parties became so evenly matched that stable government was impossible. Elgin's mistaken¹ policy of allowing party leaders to govern through him had practically reduced his successors to mere figure-heads, and they could render no help to solve the difficulty. At last, in 1864, George Brown, the leader of the Reformers, and Sir John Macdonald, the Conservative chief, formed a Coalition Government; it was the confession of failure to work successfully the parliamentary machine by the mere impulse of popular election, and there was an understanding that confederation, the only way out of the difficulty, should be adopted as soon as possible.

Meanwhile, many of the problems that had been troublesome before 1840 were successfully solved. One by one the exiles had been allowed to sue out their pardon and return. Even Mackenzie was back, now professing himself a constitutional reformer who was sorry for the past. He had expressed his regret in a letter to the

¹ Elgin's views, as laid down in his last dispatch, accord more with Durham's, but all Governors were not so strong and able as he.

Colonial Secretary, but his frequent playful references to the part the Radicals had played in 1837 and 1838 were not always relished. He soon found his true level in the united Legislature, and, seeing himself neglected, he retired into private life in 1859; in 1861 he died in comparative poverty. It is easy to judge him too harshly, and to praise him too highly; but all must admit that his was a terrible expiation from that raw December morning in 1837 till he was allowed to return in 1849. In the same year Lafontaine got a *nolle prosequi* entered against Papineau's name, and he too came back. He never regained his old influence, for Lafontaine opposed his useless agitation against the union, and at last he too retired into private life. In 1854 and 1859 Acts were passed commuting the Feudal Tenures, and in 1854 the clergy reserves were finally secularised, the rights of the existing clergy being safeguarded.

The Rebellion Losses Bill, to which Elgin assented, was after all a measure of justice, and it was not his only gift to Canada. As a counter-attraction to the wild threats of the Annexationists, both in Canada and the United States, he carried through a Reciprocity Treaty with the American Government, which was a slight relief to the prevailing depression in Canadian trade. But the Americans were not content with having robbed New Brunswick, and essayed to claim all the Pacific coast. "Fifty-four Forty or Fight" was their challenge. The Canadians would have fought, but arbitration and good sense settled the difficulty piecemeal between 1846 and 1872, this time more justly. However, these incidents and the political situation in Canada caused the leaders of both parties to eagerly accept the movement for confederation, which desire for economy had started in the maritime provinces. After conferences at Charlottetown and Quebec, the great Dominion was born in 1867. Lord Durham's principle of a strong central authority was adopted, and one by one the provinces are sinking into the position he held to be most fitting.

Already Ontario and Manitoba have decided against the second chamber, and Nova Scotia seems likely to do the same. The best men prefer Ottawa to the petty politics of the provinces, and thus help to strengthen the supreme Government. In 1856 it had been decided that future appointments to the Legislative Council in Canada should be elective, but the old system was adopted in 1867. The senate has yet a great part to play in Canadian political life, if those responsible for its nomination do their duty. The Dominion has been too forgetful of Durham's warning against the dangers of an elected Executive Council—for so the colonial ministry has become—and it has been content to see the leaders of the majority govern through the Viceroy. If the Durham Report has any message for present-day colonial politicians, it is surely this: now that the danger of a despotism is over, encourage to the utmost a lengthy tenure of office by the Viceroy, and insist that he shall be an able man, determined at least to exercise the powers assigned by common consent to his royal master. A constitutional monarchy, as Durham saw it, has many advantages over a Republic, not the least of which is the comparative stability of the chief Executive's tenure. The depth of degradation for that office is reached when the representative of the monarch can be accused of having dissolved parliament at the advice of his Premier, to give that Premier a chance to snatch a victory from his opponents. To Durham the Governor was responsible to the people whom he governed, and it was his duty to govern according to their wishes through his ministers; it was never his ideal that a minister who obtained his majority by pandering to sectional interests opposed to the national welfare should be able to secure his authority by disposing of all offices of profit at his pleasure, and by packing the senate with his nominees. Rather than assent to advice he feels to be wrong, the Viceroy should appeal to the people. If defeated, after the fullest explanation of his views he should resign, for to remain would deprive

him of all power to help the colonists. A Viceroy who is a mere figure-head possesses all the defects of the position alike of the American President and of the English King, with the usefulness and advantages of neither.

Slowly, but surely, Lord Durham's recommendations are being justified by history ; where men have not followed him, it is because they have misunderstood him. Dr. Henry, writing in 1839, tells how the Report had " become a very manual of treason," and how it had caused the Hunters to engrave the name of Lord Durham on their bowie knives " in demonstration of their idea of responsible government."¹ We, who saw the lineal successor of Papi-neau representing both peoples in " la nation Canadienne " at the coronation of our King, know more truly what the effect of the Durham Report has been. One of the greatest statesmen of the new Imperial nation which Durham foresaw in his dream is the French-Canadian leader, and it may be that he will not prove the only non-Briton in the future Councils of the Empire.

¹ " Trifles from My Portfolio," by a Staff Surgeon, Vol. II., p. 214.

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[A more complete list may be consulted at the British Library of Political Science, Clare Market, W.C.]

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