UNIVERSITÉ D OTTAWA ÉCOLE DES GRADUES

THE ENGLISH VIEWPOINT ON THE PROPOSED UNION OF 1822 TO UNITE THE PROVINCES OF LOWER AND UPPER CANADA

by Robert P. Burns

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TABLE OF CONTENTS

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CURRICULUM STUDIORUM

Robert P. Burns was born August 29, 1937. He received his Bachelor of Arts degree from the University of Ottawa in 1959.

INTRODUCTION

Among the first arguments in support of a united Canada were those put forth before the division of the province of Quebec into Lower Canada and Upper Canada in 1791. After 1791 a number of the English in Lower Canada sought persistently to extricate the English minority from the power of the Canadian majority in the Legislative Assembly of Lower Canada. They suggested three ways by which the Canadian power in the Legislative Assembly of Lower Canada could be weakened. One was to grant political representation to the English in the Eastern Townships of the province of Lower Canada. Another way was the cessation of the Legislative Assembly. A third means suggested was the union of the legislatures of Lower Canada and Upper Canada.

In 1822, the proposed Union to unite the provinces of Lower Canada and Upper Canada was discussed in the British cabinet, at the Colonial Office, in the House of Commons, among the inhabitants of Lower Canada, among the people of Upper Canada, in the legislature of Lower Canada and in the legislature of Upper Canada. This thesis proposes to show that whenever the English discussed the question of Union, there emerged differing opinions on the merits of Union.

It is necessary to explain some of the terms used in this thesis. The term Canadian was the term most

frequently used in sources to refer to that group in Lower Canada that was not English. The term Canadian was also sometimes interchanged with that of French and French Canadian. In this thesis Canadian was used most frequently.

The term English referred to all those who were not French. The English divided Lower Canadian society into English and Canadian. The inhabitants of Upper Canada were considered to be all English. In Lower Canada the English were divided into the English in the seigneuries and the English in the townships. To make the distinction clear, the former was written in the thesis as English in the Seigneuries and the latter as English in the Townships.

The term bureaucrat referred to an individual who held an executive position in a government and depended on that government for his livelihood. The term nativist referred to an individual who sought to assimilate the Canadians into English society. The term separatist referred to the English in Upper Canada who opposed the Union of Lower Canada and Upper Canada.

CHAPTER I

CONSIDERATIONS ON THE QUESTION OF UNION: 1788-1821

On May 16, 1788, the British House of Commons passed a motion which allowed Adam Lymburner[1], agent of that section of the population of the province of Quebec desirous of having a House of Assembly, to be heard at the bar of the House of Commons in support of a petition[2] from Quebec which had been drawn up on November 24, 1784 and forwarded to Britain. Thereupon, Lymburner was admitted and he read a paper pointing out the defects of the system of laws then administered in the province of Quebec and the need for a remedy.

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1 Adam Lymburner, who was born in 1745 at Kilmarnock, Scotland and died in 1836 in London, England, settled in Quebec in 1776 to take over the business of his brother, John, who had been lost at sea. In the province of Quebec, he became an influential member of the British minority in the colony. Having taken an active part in the movement for the repeal of the Quebec Act and for the establishment of a House of Assembly, Lymburner was sent as a delegate to London to put his views before a committee of the House of Commons. He presented the case of the British merchant in the colony and all who desired a new form of government. When he learned that the Imperial Government had decided to divide Quebec, he considered the plan to be ominous. He predicted, among other things, that the ill-advised step would hinder the economic development of the St. Lawrence Valley.

2 P.A.C., Series Q, MG 11, Vol. 62 A, pt. 1, Papers Respecting Lower Canada and Newfoundland 1790-1792, pp. 309-318.

In the debate that followed after he had withdrawn, the conclusions reached were that the petitions from Quebec merited the serious and immediate attention of the House of Commons, but that nothing could be done until a sufficient body of information had been transmitted from Quebec to enable the House of Commons to determine upon the merits of the subjects contained in the petitions. As a result, the House of Commons dropped the debate and decided that Parliament would consider the petitions from Quebec early in the subsequent session.

In an effort to obtain the necessary information the Colonial Secretary, Lord Sydney[3], requested a detailed report on the Quebec situation from Governor-General Dorchester[4]. Sydney confided to Dorchester that it was

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3 First Viscount Sydney, Thomas Townshend (1733-1800). He entered Parliament in 1754; was lord of the treasury in 1765; appointed war secretary in 1772 and then home secretary in 1783. The office of home secretary then included the colonies. Lord Grenville replaced him as Secretary of State in 1791.

4 First Baron Dorchester, Guy Carleton (1724-1808). Carleton was born at Strabane, county Tyrone, Ireland on September 3, 1724. On May 21, 1742, he was commissioned an ensign in Lord Rothe's regiment and by 1757 was a lieutenant-colonel. On the expedition against Quebec in 1759 Carleton served as quartermaster-general under General James Wolfe. After serving as lieutenant-governor of the province of Quebec for two years, he was appointed governor of that province in 1768 and remained in that office until he retired in 1778. He returned to North America in 1782 as commander-in-chief. Having received the title Baron Dorchester, Carleton was commissioned as governor-in-chief of British North America in 1786 and remained in that office until 1796. He then retired again and returned to England where he died in 1808.

"in Contemplation to propose to Parliament a division of the Province"[5], but previous to any step towards the execution of a division, the British government was "desirous of receiving the advantage of Your Lordship's (Dorchester's) opinion how far it (division) may be practical or expedient"[6]. As far as the Governor-General was concerned, "a division of the province (was) by no means advisable at present"[7]. In fact, the western settlements in his opinion were "as yet unprepared for any organization, superior to that of a county"[8].

If, however, Britain did divide the province of Quebec, Lord Dorchester urged that the Imperial Government consider a certain minority that would emerge at the western end of the upper division, namely, the Canadians at Detroit. For this group "particular care should be taken to

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5 P.A.C., Series Q, MG 11, Vol. 36, pt. 2, Minutes of Council, Quebec, 1788, Sydney to Dorchester, September 3, 1788, p. 473.

6 Ibid.

7 P.A.C., Series Q, MG 11, Vol. 39, Petitions and Minutes of Council, Quebec, 1789, Dorchester to Sydney, November 8, 1789, p. 111.

8 Ibid.

secure (their) property and civil rights"[9], for they would be living in a predominantly English Loyalist province. He failed, however, to warn Sydney about the necessity of doing the same for the English inhabitants in that part of Quebec that would become predominantly French.

By October, 1789, the British government had determined to include the proposed division of Quebec in the plan for changes in the government of Quebec. Once the resolution was taken of establishing a provincial legislature, "every consideration of policy seemed to render it desirable that the great preponderance possessed in the Upper Districts by the King's antient Subjects, and in the lower by the French Canadians should have their effect and operation in separate Legislatures"[10]. Division, according to Grenville[11], was not necessarily permanent but a better

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9 Ibid., p. 112.

10 P.A.C., Series Q, MG 11, Vol. 42, Miscellaneous Correspondence Quebec 1789, Right Honourable W.W. Grenville to Lord Dorchester, October 20, 1789, p. 97.

11 Baron Grenville, William Wyndham (1759-1834). He entered the British Parliament in 1782; became paymaster general in 1783, and was selected as Speaker of the House of Commons in 1789, a position which he vacated in 1791 to become Secretary of Foreign Affairs. He was created Baron Grenville in 1790. In 1806 he became First Lord of the Treasury.

policy "rather than that these two bodies of People should be blended together in the first formation of the new Constitution, and before sufficient time has been allowed for the removal of antient prejudices by the habit of obedience to the same Government, and by the sense of a common interest"[12].

Although Grenville made it clear that a policy of division would be submitted to Parliament, Dorchester still endeavoured to avoid it by suggesting as an alternative "a General Government for His Majesty's Dominions upon this Continent, as well as a Governor-General, whereby the united exertions of His Majesty's North American Provinces may more effectually be directed to the general interest, and to the preservation of the Unity of the Empire"[13]. The Colonial Office dismissed this plan as it had dismissed Dorchester's first alternative to division.

Dorchester's opinion was an echo of that of his

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12 P.A.C., Series Q, MG 11, Vol. 42, Miscellaneous Correspondence Quebec 1789, Grenville to Dorchester, October 20, 1789, p. 97.

13 P.A.C., Series Q, MG 11, Vol. 44, pt. 1, Letters from Lord Dorchester and Minutes of Council 1790, Dorchester to Grenville, February 8, 1790, p. 28.

Chief Justice, William Smith[14], who, in a report to the Governor-General including Smith's views on Grenville's plan, regretted the omission of "the expected Establishment to put what remains to Great Britain of Her Antient Dominions in North America, under one general direction, for the united interest and safety of every Branch of the Empire"[15]. The epitome of a white Anglo-Saxon Protestant forced out of New York for Loyalist sympathies, Smith not only dreaded the "petty parliaments" that would result in the divided provinces, but also feared that these assemblies, as in the colonial United States, "could not but discover in their Elevation to Prosperity, that <u>themselves</u> were the Substance, and the Governor and Board of Council mere shadows"[16]. An obstreperous assembly was indeed a fearful possibility, but a far greater trepidation was that the particular situation in the proposed Lower Canada afforded

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14 William Smith (1728-1793). Smith, who was born in New York City, graduated from Yale in 1745; was called to the New York bar, and practised in that city. In 1763, he was appointed Chief Justice of the colony and sat in the Council, 1767-1782. Appointed Chief Justice of Canada in 1786, he held that office until his death. Smith possessed ultra-English sentiments.

15 P.A.C., Series Q, MG 11, Vol. 44, pt. 1, <u>Letters from Lord Dorchester and Minutes of Council 1790</u>, Chief Justice Smith to Lord Dorchester, February 5, 1790, p. 62.

16 <u>Ibid.</u>, Smith to Dorchester, February 5, 1790, p. 63.

the French a potential opportunity to control Smith's re-created English society at Quebec. As a former resident of colonial New York, he remembered what the Americans "dreaded from this French colony in the North, and what it cost to take away that Dread"[17]. The division, for the Chief Justice, conjured up visions of a horrible repetition in Lower Canada of the events that haunted his past in America.

The intended plan of division became official government policy in February, 1791, when the Chancellor of the Exchequer, William Pitt[18], presented the following

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17 Ibid., p. 66.

18 William Pitt (the Younger), 1759-1806. The second son of William Pitt (the Elder), Earl of Chatham, was born at Hayes, England. He entered Parliament in 1781 and was Prime Minister in 1783 until 1801. A liberal Tory, his policies included new taxes to cut national debt, reforms in India and Canada, and parliamentary reform. French Revolutionary and Napoleonic Wars doomed these policies. In consequence of French aggressions, he formed in 1793 a great coalition with Russia, Sardinia, Spain, Prussia and Austria. In 1798 he formed a second coalition against France, including Russia, Austria. Pitt resigned office in 1801. Again premier in 1804, he formed in 1805 a third coalition with Russia, Austria and Sweden. The union of Ireland with Great Britain was effected by his influence and under his administration. Pitt, as Prime Minister in 1791, introduced the Canada Bill of 1791 into the House of Commons.

message from the King in the House of Commons:

> His Majesty thinks it proper to acquaint the House of Commons, that it appears to His Majesty, that it would be for the benefit of His Majesty's subjects in his province of Quebec, that the same should be divided into two separate provinces to be called the province of Upper Canada and the province of Lower Canada; and that it is accordingly His Majesty's intention so to divide the same, whenever His Majesty shall be enabled by act of parliament to establish the necessary regulations for the government of the said provinces. His Majesty, therefore, recommends this object to the consideration of this House[19].

When it became known that the English government wished to divide the province of Quebec into two provinces as well as to grant representative government, the English merchants, in what would be Lower Canada realized that there was the potential threat that they could not control the assembly and the reality that the proposed political division would precipitate an unnatural economic division of the St. Lawrence Valley. As a result, "the English in Quebec (the part to be Lower Canada) were entirely against this project since it put them in an inferior

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19 T.C. Hansard, et. al., The Parliamentary History of England (from the Earliest Period to the Year 1803), Vol. 28 (May 8, 1789-March 15, 1791), London, T.C. Hansard, 1816, p. 1271. After 1803 this parliamentary history was known as The Parliamentary Debates.

minority"[20]. On March 23, 1791, while the new Canada Bill was being debated, Adam Lymburner again appeared before the House of Commons with a final plea to reject the plan of division of the province of Quebec.

He declared that he could not conceive what reasons had induced such a violent measure. It was not the general wish of the Loyalists who were settled in the upper parts of Quebec and he was certain that no such idea was entertained in the lower part. Those Loyalists, himself, and the petitioners whom he represented were burdened with an inadequate civil government and worried about the preservation of their property because they existed under laws they did not know. Those who were desperate and exasperated might have sought division, but only because they saw no other way out of their misery and distress.

The agent of the English merchants urged the Commons to ponder well the division which would separate forever the interests and connections of the people of a country who, from local situation, were certainly designed by nature to remain united as one. Furthermore, the unilateral action of Britain ignored the fact that the interests, the feelings,

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20 Michel Brunet, "L'Honourable Adam Lymburner", Bulletin Reserches Historiques, Vol. 37, No. 9, September, 1931, p. 557.

and the desires of the people of Lower Canada ought to have been consulted and attended to as well as the "wild projects of a small body of people, who are thinly scattered over the upper parts of the province, who have not had time to inquire into and examine their relative situation, and the natural dependence which their country must have on the lower parts of the province"[21]. He exhorted the Imperial House of Commons to prove that Quebec had been consulted or that the inhabitants of that province had approved the idea, or that division had been requested in any petition.

A further dismemberment of the commercial area of the St. Lawrence would not only reduce greatly the resources of the province of Quebec, but it would injure unjustly the interests of the merchants who had witnessed the mutilation of their economic sphere in 1783 and then in 1791.

Stressing the note of finality once again, Lymburner portrayed separation as a policy of no return. If the division caused danger to the security of the government or to the general interests of the people, the situation would degenerate into hopelessness, for the country "cannot again be reunited"[22]. The fact that the people were scattered over

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21 P.A.C., Series Q, MG 11, Vol. 62A, pt. 1, Papers Respecting Lower Canada and Newfoundland 1790-1792, p. 20.

22 Ibid., p. 21

the country necessitated the unity of the province because those people all looked up to one centre of government for protection and relief and this characteristic tended to bind the people together and provided for greater association and protection. If Quebec were divided, these uniting factors would cease and both parts would suffer. This mutual connection with the same government formed a prominent feature in the character of any nation and according to Lymburner, "people are more united in the habits of friendship and social intercourse, and are more ready to afford mutual assistance and support from being connected by a common centre of government than by any other"[23].

Considering the consequences still further, Lymburner pointed out how the new upper province would be cut off from all communication with Great Britain; it would not be able to carry on any foreign commerce except by the intervention and assistance of the merchants of Quebec and Montreal; its government would be complete within itself, and lastly these factors would culminate in the upper province drifting away from connections with Britain. In fact, these circumstances could actually cause the upper province to break away from England.

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23 Ibid., p. 22.

Adam Lymburner then approached the problem from a purely business aspect. Geographically, the division would preclude an ocean port for the upper part of the divided area, with the result that this section could not hope for revenue from customs to offset government expenses. Since the imposition of duties on imports was the main source of funds for this purpose, the petitioner felt certain that the possibility of the upper province forfeiting this means would alone "be sufficient to engage the Honourable House to reject the plan (of division)"[24]. Should Britain proceed with division, an intolerable situation would result in the above mentioned deficiency as well as in the occasion of the upper government paying duties or taxes applied on their imports towards the support of the civil government of the lower province or for public works in that province - a situation of questionable duration. The problem of an upper province port could be obviated simply by maintaining the present united colony of Quebec with its two main ports of entry at Quebec and Montreal where customs collected could meet the government expenses of one administration without recourse to the treasury of England.

The Quebec petitioner further reinforced the

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24 Ibid., p. 24.

economic disadvantage for Britain should the proposed separation occur. The petition of 1784 included an offer by the colony to assume the costs of civil government, but a divided province would destroy that desire because "it will be absolutely impossible for them (people of a divided province of Quebec) to raise sufficient funds to support two governments"[25]. The entire reason for the upper part falling into debt was its great distance from foreign navigation which caused great expense, time and labour to get produce to a port. Although the farmer had an alternative to the high cost of transporting his production, namely, selling it at a cheap price to a salesman who would have to absorb the cost of transportation, the result was always the same, that is, the high cost of transportation would greatly lower the real value of the farmer's produce and leave him with little money.

Division would greatly aggravate the problem because the people in the upper parts would lose their ports and would suffer a further expense by paying duties and taxes levied by the lower part on imports for both the lower and the upper parts and even possibly on exports. These financial burdens of the upper districts would culminate

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25 Ibid., p. 75.

rapidly into a situation wherein they could not finance their own government; so the burden would fall on Britain. Were the government of the lower part to suffer financial reverses, Britain would be then supporting two governments; whereas, in united Quebec there was the possibility of supporting only one.

Having inferred that some Loyalists, who were so little acquainted with the Quebec situation, had reached cursory conclusions, Lymburner implied that Britain had adopted similar hasty remedies to the problems; problems for which it was impossible "for the wisdom of man to lay down a plan if Quebec were divided"[26]. It was easy to solve the racial and linguistic problem by advocating the dividing of the two groups; just as it was convenient to camouflage the lack of a port for the upper province by Parliament's legislating that drawbacks be paid on duties ordered to be levied by Parliament for the regulation of commerce. The drawback technique was ill-advised because it "will open the door for smuggling in a country where there is no possibility of preventing it"[27] and moreover because it would bring the two provinces together too often on a very delicate and important matter, namely, money.

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26 Ibid., p. 27.

27 Ibid., p. 28.

Thereafter, the representative of the British merchants in Quebec considered the possible reasons for division and methodically refuted each argument. Representative government and the prevailing economy in the province government prevailed against the matter of distance from Detroit to Gaspé as a factor for division, for it was likely that farmers would not be elected because "it cannot be expected that the new settlers (in the upper part) will be, for some time sufficiently advanced in the cultivation of their farms to find it convenient to be absent from their homes three or four months, either to meet the Legislature in their own province or at Quebec"[28]. It was probable that the farmers would elect businessmen who could absent themselves for some months because they would be going to the centres of business - Montreal and Quebec - and thus, if they were going on business, they may as well be elected and be willing to go and stay at these distant places to further their area's prosperity. Therefore, since a division would not result in a different group of representatives, there was no need for a division because those elected would be the same with the same interests.

This was the strongest refutation of the distance factor, although he supplemented it with the observation

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28 Ibid., p. 31.

that the tranquility of the whole province ought not to be sacrificed for the possible inconvenience of a few; that it was more difficult to get from the Orkney Islands to London, England than from any part of the inhabited area of Quebec to the capital; that Quebec town was truly the centre of the colony because it was about five hundred miles to Niagara, the utmost extent westward of cultivated land, and about four hundred miles to Gaspe and Chaleur Bay. Lymburner dismissed the small settlement around Detroit because it was isolated from trade by Niagara Falls and would only develop into a local, small economy.

To argue that the need of the Loyalists for lands, property and inheritance different from the lower districts was a basis to support division, represented a fallacy. Alluding to the union of England and Scotland under one legislature, Adam Lymburner illustrated that "though two countries or districts may have different laws to regulate and govern their Courts of Justice, that one legislature may be fully sufficient for the purposes of legislating for both, and can attend the laws and regulations, or alterations that may become necessary or convenient to either"[29]. On this basis he urged the House of Commons that the Upper Districts of Quebec could have no just cause to be afraid

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29 Ibid., p. 33.

of being included as members of the Province of Quebec.

The Loyalist demand for dispensing courts to afford better justice encountered no consideration from Lymburner who summarily dismissed the complaint by pointing out that there was no need for criminal judges in the Upper Districts because there were so few higher crimes there. According to him, these Upper Districts were bordering on almost absolute peace for in the past twenty years he could not recollect a single instance of highway robbery and, moreover, the farmers considered themselves so secure that they often went to sleep without bolting their doors. Furthermore, since crimes tried in Criminal Courts were generally committed in the towns where strangers congregated, there was no cause for alarm in the upper parts for there a stranger was so rare that he "must at all times be a considerable sight"[30].

To facilitate the better dispensation of justice, there was no need for division, rather a Chief Justice should be appointed to act as Criminal Judge with jurisdiction over all the upper settlements; that an office of Lieutenant-Governor be created in the area concerned to represent the power of government and to execute its orders, and that a Court of Errors or Appeal be established to revise the proceedings of the Court of Common Pleas. All

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30 Ibid., p. 35.

these innovations could be effected in a united Quebec to the greater benefit of all, for "a society with a variety of contradictory interests (can) be more easily managed and governed by one government than when divided into smaller and more compact bodies"[31].

Lymburner stated bluntly that he did not believe that those Loyalists settled in the upper parts of the province had generally requested the separation and if they had, then the request should not be referred to as a Loyalist request because there was not any Loyalist agreement regarding division. With utmost confidence he asserted that no one could say the Loyalists in the district of Lunenburgh near Montreal had discussed it with those at Niagara and Detroit and even the Loyalists in the upper districts had not considered it as a group because they rarely saw each other after obtaining their settlements. Thus, in Lymburner's view, the Loyalist grievances as a factor for separation ceased its validity because of its limitations.

Considering the project of division in a broader sense, Lymburner granted that perhaps in the future when Britain and other protagonists of the measure had more information and knowledge of the consequences, separation

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31 Ibid., p. 36.

would be wise. In 1791, however, the advantages of a united Quebec "are unanimity, mutual support and strength; whereas, the dangers of division are political weakness, dissension, animosities and quarrels"[32]. Firm and eloquent to the end, Lymburner informed the British parliamentarians that he had "considered the subject a thousand times since (he) first heard of the intended division, but had not been able to form any reasonable idea of the motives which had induced the proposition of such a dangerous experience"[33].

Nineteen days before Adam Lymburner spoke before the bar of the Imperial House of Commons the British Prime Minister, William Pitt, had informed the members of Parliament that he "would state the grounds and principles on which he meant to proceed in forming a constitution for a valuable appendage to the British Dominion"[34] - Canada. As usual, the general aim was to make new regulations for the future government of Canada and more specifically the new constitution would "put an end to the differences of opinion and growing competition that had for some years existed

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32 Ibid., p. 77.

33 Ibid., p. 65.

34 Hansard, et. al., op. cit., March 4, 1791, p. 1376.

in Canada, between the ancient inhabitants and the new settlers from England and America", as well as to "bring the government of the province as near the nature and situation of it would admit, to the British constitution"[35].

To realize these intentions, the government proposed that the province of Quebec be divided into two parts; the upper part for "the English and American settlers" and the lower part for "the Canadians"[36], and to give a local legislature to each. This division, it was hoped, could be made in such a manner, as to give to each a great majority in their own particular part, although the Prime Minister pointed out that it could not be expected to draw a line of complete separation. Division, thus, was not perfectly clear in Pitt's mind as to its exact meaning, for he referred to it as division, but also an incomplete separation. Similarly, Lymburner did not conceive division as complete separation, but rather as a "partition"[37] of Quebec.

In the next debate over a month later on the Quebec Government Bill, the chief opposition to Pitt's proposals

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35 Ibid.

36 Ibid.

37 P.A.C., Series Q, MG 11, Vol. 62A, pt. 1, Papers Respecting Lower Canada and Newfoundland 1790-1792, p. 73.

emanated from Charles Fox[38] who opposed chiefly because the proposed constitution was not consistent with the principles of freedom, that is, "that the whole constitution was an attempt to undermine and contradict the professed purposes of the bill, namely, the introduction of a popular government into Canada"[39].

Of all the subjects in the bill, that which struck Fox most forcibly was the division of the provinces because it negated the greatest desideratum, namely, that the French and English inhabitants of Canada should unite and coalesce, as it were, into one body and that the different distinctions of the people might be extinguished forever. So certain of the desirability of English laws was this English Whig that he claimed that given a fair trial they would be found free from all objection and when the Canadians realized this boon they would choose English laws, not by force, but

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38 Charles James Fox, 1749-1806. He was an English Whig statesman and orator who was disliked by George III, but a friend of the Prince of Wales (George IV). As an opponent of Lord North, he attacked British policy in the American war. Fox was foreign secretary for brief periods in 1782, 1783, and 1806. He opposed William Pitt by demanding British non-intervention in the French Revolution. Charles Fox also urged the abolition of the slave trade and political freedom for dissenters.

39 T.C. Hansard, et. al., op. cit., Vol. 29 (March 22, 1791 - December 13, 1791), April 8, 1791, pp. 106-7.

from a deep conviction of their superiority. Such a possibility of this adoption by choice, according to Fox, was most unlikely if the province were divided[40].

To the Canadian, Fox would have illustrated a strange phenomenon in that he, as one of the foremost British advocates of liberty, could formulate a telling argument by which British liberals of 1791 could justifiably urge the granting of liberal principles to a colony, fully convinced that by so doing, British institutions would prevail. Political liberty, according to Fox, was as fully capable of assimilating foreign aspects in a British colony as political conservatism, and it had the added advantage of being chosen, rather than forced. Charles Fox opposed Pitt mainly on the matter of principles.

Debating the Canadian problem in theory and in a situation isolated from the realities by three thousand miles of ocean, Fox stated his thoughts on British institutions and expressed the candid view that they were the best in the world. To the Canadian of 1791, Fox's candid view was prejudice. In his attempts to place British institutions throughout Canada, Fox was motivated by a good and meritorious purpose, but that same purpose was viewed as diabolical by the Canadians who dreaded it as assimilation.

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40 Ibid., p. 109.

Unaware of the increasing depth of the cross purposes existing in Quebec by 1791 between the English and the Canadians, Fox approached the Quebec problem from an insulated, intellectual and theoretical vantage point, a position that would bear little fruit upon the rock of reality. His aim of assimilation originated not from a nativist impetus, but from the prevailing British thought of the time. The British, thinking their institutions were superior to all others, found it difficult to understand why all people did not agree with this view.

On the other hand, Pitt advocated that Fox's aim could best result by dividing the province. The Prime Minister agreed with Fox in thinking it extremely desirable that the inhabitants of Canada should be united and led universally to prefer the English constitution and English laws. This objective would best be realized in division because "the French subjects would be sensible that the British government had no intention of forcing English laws upon them and therefore they would, with more facility, look at the operation and effect of those laws, compare them with their own, and probably in time adopt them from conviction"[41].

This opportunity for the French subjects to consider

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41 Ibid., p. 113.

English institutions objectively was impossible in a united province because there would be only one house of assembly, but two political parties. If those two parties would be equal or almost equal, there would be perpetual faction in the assembly, whereas, if one of the parties were stronger than the other, the weaker would complain that it was oppressed. Thus, William Pitt, the Prime Minister of England in 1791 concluded that "it was on that persuasion that division of the province was conceived to be the most likely way of attaining every desirable end"[42].

Although he agreed with Fox about the desirability of English institutions prevailing in Canada, Pitt considered this end secondary to achieving calm and tranquility in colonial politics and for this end he was, in fact, willing to sacrifice partially the possibility of prevailing English institutions by giving the French an opportunity to retain many of their desired aspects of society. Pitt's action was a calculated risk that he thought would bear dividends in that the French would "probably in time adopt (English institutions) from conviction"[43]. The possibility of the French adopting English institutions was very remote

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42 Ibid., p. 114.

43 Ibid., p. 113.

in Pitt's mind for he qualified that possibility twice; once by adding that the possibility would occur "in time" which inferred that the adoption would at least occur, and secondly by adding "probably" which inferred that there was the fact that the adoption might not occur. He attacked the Canadian problem with a new solution; it failed, but Pitt may be lauded for supporting a remedy.

In later debates during May, 1791, Pitt reinforced his plea for division. He emphasized that not only was there "no probability of reconciling the jarring interests and opposite views of the inhabitants, but by giving them two legislatures", but also reiterated the consequences of two almost balanced parties in one assembly adding that "for at least a long series of years there would be a great degree of animosity and confusion"[44].

Lymburner's admonition that it was impossible for the wisdom of man to lay down a plan if Quebec were divided took its toll on Pitt who by May 11, 1791 was defending division on the basis that it "was subject to fewer (objections) than any other measure"[45]. Having successfully countered Fox's request if the King had the power to divide

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44 Hansard, et. al., op. cit., Vol. 29, p. 402.

45 Ibid., p. 402.

the province, the Prime Minister weathered a charge that he was sacrificing the group of English in the future Lower Canada to whom the King had promised the British constitution.

Pitt hastened away from the subject of the English in Lower Canada by diverting his assailant's attention to the great addition of English from Britain that was expected to go to Upper Canada. Were Upper Canada not made a separate part, the Canadians who then formed a majority of five to one would dominate the one assembly for the whole area with the result that even with English immigration to Upper Canada, the Canadians would maintain control of the assembly and the grievances of the English in such a situation would increase annually. This division would benefit England because it would create a New England in Upper Canada for those departing from England.

In the midst of the debate, William Pitt received support from one of his father's greatest political adversaries. Edmund Burke[46] admitted he did not know the local

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46 Edmund Burke, 1729-1797. He was a British Whig statesman and political writer who was born in Dublin. He entered Parliament in 1765; became agent for New York province in 1771 and from 1774-1775 strongly opposed the war with America which brought him into conflict with Prime Minister William Pitt (the Elder, Earl of Chatham). Always a strong Whig, his opposition to the French Revolution, however, led him to break with that party in 1791.

facts, but he approved the division as "accommodated to the circumstances of the country and the natural prejudices of the people". Division would enable the Canadians to have a Canadian constitution and the English to have an English constitution. Moreover, Pitt's plan was convenient not only because it was "absurd to attempt to join people so dissimilar in law, language and manners, but also because it was folly to join conquerors and conquered"[47].

Contrasted with the quiet atmosphere surrounding the preparation of the Canada Bill of 1791 was the malestorm raging in France that occupied the minds of British parliamentarians. Unable to endure the excesses in the search of liberty that the French Revolution consumed, Edmund Burke issued in November, 1790, a scathing denunciation of the revolution in his Reflections on the French Revolution which defended adamantly the great place needed to be allowed in politics to habit and tradition.

By so doing, Burke severed his connection with the more radical Whigs, such as Charles Fox, who defended the Revolution as a paragon of liberty of the people. Even before the radicals or supporters of innovation voiced their dissent against various parts of the Canada Bill of 1791 because it restricted liberty, one of their number attempted

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47 Hansard, et. al., op. cit., Vol. 29, p. 403.

to counter Burke's monumental work. In April, 1791, the Vindiciae Gallicae, a pamphlet written by a young Scottish doctor, James Mackintosh, endeavoured to refute Burke. Mackintosh, who in 1822 would cause the withdrawal of the Union Bill of Upper Canada and Lower Canada, stoutly defended the events in France:

> If the effervescence of the popular mind is suffered to pass away without effect, it would be absurd to expect from languor what enthusiasm has not obtained. If radical reform is not, at such a moment, procured, all partial changes are evaded and defeated in the tranquillity which succeeds . . . . Whatever excellence, whatever freedom is discoverable in governments, has been infused into them by the shock of a revolution . . . . Whatever is good ought to be pursued at the moment it is attainable. The public voice is irrestible in a period of convulsion, is condemned with impunity, when dictated by that lethargy into which nations are lulled by the tranquil course of their ordinary affairs . . . . No hope of great political improvement . . . is to be entertained by tranquility, for its natural operation is to strengthen all those who are interested in perpetuating abuse. The (French) national assembly seized the moment of eradicating the corruption and abuses, which afflicted their country. Their reform was total . . . . The enthusiasm which carries nations to such enterprises is short lived, and the opportunity of reform if once neglected, might be irrecoverably fled[48].

Had Doctor Mackintosh been in parliament in 1791, he likely would have opposed the Quebec Bill of 1791, which divided the province of Quebec into Upper Canada and Lower Canada as a restriction on the liberties of the colonists.

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48 S. Maccoby, English Radicalism 1786-1832, London, 1955, pp. 39-40.

Over thirty years later, he did oppose successively the Canada Government Bill of 1822, which proposed to unite Upper Canada and Lower Canada, on the grounds that the colonists were being deprived of their liberty because the British government had not consulted the Canadas regarding the proposed change in the constitution of the provinces. In effect, liberty could be used to criticize any government colonial policy short of a grant of complete independence.

Even with Burke's support, Pitt was challenged further. One member considered that division would encourage settlement in the interior parts of America which were difficult to reach and distant from Britain. The colonies of farmers resulting in these interior locations would produce the same crops as Britain and any surplus in Upper Canada would be exported to compete on the British market. The distance of the market and the difficulties in transportation, however, would limit the growth of grain and those not in farming would establish manufacturing industries because manufactured goods would be difficult to get from Europe. Britain would not only lose a market for her manufactured goods, but during the time secondary industries were being established in Upper Canada, the residents there would import goods from the United States to replace European goods. Thus, there was no advantage to

the interior settlements that would result from the division.

After the Quebec Government Bill, as introduced by Pitt, passed the House of Commons, it was further debated in the House of Lords where Lord Grenville, Pitt's Foreign Secretary, who had been responsible for drafting the bill, had an opportunity to speak on his proposed remedy for the problems in Canada.

Having gone to the House of Lords before his Quebec government bill was debated in the House of Commons, Lord Grenville finally was able to support the bill on May 30, 1791, the only day of debate in the House of Lords. From either deference or enlightenment, Pitt's Foreign Secretary, urged his fellow peers to abandon the habit of referring to French-Canadian desires as prejudices for the custom of referring to these purposes as "an attachment founded in reason"[49].

Rather than continue to extrapolate on how the Quebec government bill accommodated two reasonable groups, namely, the French and English in Canada, Grenville emphasized the power and right of Britain to interfere in the new colonial constitution. Had Britain granted the colonies concerned a free and independent constitution this Imperial right was dubious, but since it was only a free constitution,

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49 Hansard, et. al., op. cit., Vol. 29, p. 655.

the existence of the right of Imperial interference was certain. Proceeding from his distinction between a free constitution and a free and independent constitution, Lord Grenville cited as an adequate situation for Imperial interference an instance wherein Lower Canada might be oppressing Upper Canada by imposing exorbitant duties. Acting as umpire in such a case, "it was competent to England to hold the balance between the two provinces and to remove the grievance"[50]. This theory justified British interference even when Britain professed it gave a free constitution to Canada.

Grenville's lone adversary, Lord Rawdin, debated against division not only because it sacrificed one section for the other, but also because he was "not satisfied that there was a power in the crown to make such a division"[51]. On the other hand, Lord Abingdon embraced the entire bill chiefly because "it restored the external right of regulating the commerce of all its dependencies for the sake of navigation and for safety and for the general benefit of the empire"[52].

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50 Ibid., p. 657.

51 Ibid., p. 659.

52 Ibid., p. 658.

Both Pitt and Grenville realized that the hazards in innovation were as great as those from inaction. The constitution that they tailored for the Canadas had checks and balances built into it and the greatest check was the maintenance of Imperial parliamentary interference. With the debate ended, it came to pass that on August 24, 1791, the King ordered that "the Province of Quebec be divided into two distinct provinces, to be called the province of Upper Canada and the province of Lower Canada"[53].

Thwarted in the House of Assembly in the newly created province of Lower Canada by the tyranny of the majority, the English members despaired of the previously sought for control of politics and resigned themselves to the undesirable situation. They contemplated ways of preserving what they had, of furthering their interests and of limiting the political power of the Canadians. The nadir

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53 Arthur G. Doughty and Duncan A. McArthur, eds., Documents Relating to the Constitutional History of Canada 1791-1818, Ottawa, King's Printer, 1914, p. 4.

of the English group was readily apparent by 1793 when John Richardson[54], the reputed leader of the English group in Montreal, mourned that "the prospect of future utility from their (the Canadians') deliberations is as slender, as the past has been productive of any one desirable regulation"[55]

One glimmer of hope emanated from a bill passed in the Assembly. According to this bill, French would be the legal text for laws dealing with property and civil rights. Richardson rejoiced, for he saw the possibility that the Legislative Council would reject the French text and if they did not, then the Government had to as an English sovereign had no authority to sanction laws in a foreign language. He envisioned the functions of govern-

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54 John Richardson (1755-1831). He was born at Portsoy in Banffshire, Scotland. Coming to America in 1773, he became associated with the business of Phyn and Ellice at Schenectady. Four years after the end of the American Revolution in 1783, he went to Quebec where he worked for the business of Robert Ellice and Company. Members of this company, including Richardson, became partners in the North West Company in 1804. During his political career, Richardson represented Montreal in the Legislative Assembly from 1792 to 1796 and from 1804 to 1808. In 1804 he was appointed a member of the Executive Council and in 1816 a member of the Legislative Council. By 1822 he still possessed these two positions. He was chairman of the Montreal meeting in 1822 that was held to prepare a petition in support of the proposed union of Upper Canada and Lower Canada.

55 F.H. Soward, "The First Assembly in Lower Canada", Canadian Historical Review, Vol. IV, No. 3, September, 1923, p. 260.

ment grinding to a halt and in quick succession a prorogation or dissolution followed by a new Imperial act of Parliament in which division would cease, for "the division of the province, is now, if possible, more manifestly injurious than before"[56].

If that did not happen, Richardson took solace in the English party becoming the balance of power, for he thought there were two parties among the French. One was against the constitution because the English procured it; the other was a potential republican party "infected with the detestable principles now prevalent in France"[57]. His conclusion was the epitome of despair, for he wrote:

> Nothing can be so irksome as the situation of the English members - without numbers to do any good - doomed to the necessity of combatting the absurdities of the majority without any hope of success[58].

One Englishman in Lower Canada bypassed recourse to the political structure in that province and supplicated the Crown and the British Parliament. Commenting on the government of Lower Canada in 1806, John Black[59] described a future

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56 Ibid., p. 262.

57 Ibid.

58 Ibid., p. 263.

59 John Black was an Englishman who had resided in Lower Canada for many years and was a member of the Legislative Assembly of Lower Canada for the County of Quebec from 1796 to 1800. He returned to England in 1806 after residing in British North America for twenty-one years.

of the English in the assembly in which "British Influence can never get more than Twelve Members returned who have to contend with the passions and prejudices of Thirty Eight French"[60].

Far from being problems, these difficulties were evils, among which Black mentioned the dichotomy in the militia creating two distinct bodies, one French and the other English. This possibility of military weakness was accentuated by the lack of any law that bound British dominions in America to assist the other "if attacked by an Enemy in case of Treason raising her standard in the Country, or if attacked from without by a Foreign Enemy"[61].

Black's panacea for these evils was a union of the provinces of Upper and Lower Canada, if it could be done conveniently, or even the erection of eight new counties in Lower Canada which would return two members each. Either solution would cease the threat of the French majority and, of course, Black omitted the possibility of a threatening English majority.

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60 P.A.C., Series Q, MG 11, Vol. 106, pt. 2, Governor Craig and Miscellaneous 1807, John Black to Field Marshal His Royal Highness Duke of Kent, October 9, 1806, p. 565.

61 Ibid., p. 568.

The weakness in Black's suggestion was the qualifications for the Governor-General of the union who would be Commander-in-Chief, would receive all civil and military communications as well as being Post-Master General and who would be not only a master of the geography of the country, but also a linguist in English, French and German. In addition, the Governor-General ought to be acquainted with the four provinces as well as the characters of those in power in those provinces. The noteworthy point was not that Black's candidate could never be found, but that among the qualifications of the Governor-General was listed his versatility in the German language as well as an acquaintance with German manners and customs since there was a considerable number of Germans in British America.

Herman Witius Ryland[62] supplemented Black's portent of treason with a political situation of impending chaos, for "the time is fast approaching when the House of Assembly (of Lower Canada) will become the centre of sedition, and

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62 Herman Witius Ryland (1760-1838) was an Englishman who held several official appointments in Canada. He was strongly anti-French. In 1810 he represented Governor-General Sir James Craig on an unsuccessful political mission to Britain. His letters and writings are among the best comment on the ideals of the extreme English party. When the proposed Union Bill of 1822 was being discussed in Lower Canada, he was a member of the Legislative Council as well as of the Executive Council.

respectable for the most desperate demagogues in the province"[63]. The turmoil was compounded for Ryland by the fact that in 1808 there appeared no "existing means . . . to counteract the projects which such a House of Assembly may form"[64]. Most imperative was the need to afford an adequate check to a bold systematic attempt on the part of the Assembly to obtain a mischievous preponderance in the Provincial Legislature and to establish a general plan for assimilating the Colony in its religion, laws and manners with the Parent State. These aims had been foiled in the democratic process; they had been thwarted in the courts and Ryland's last resort to mitigate the power of the French or Roman Catholic party was by allowing any township possessing a certain population to elect representatives as well as by placing more true Englishmen, that is, "persons born and educated in any part of His Majesty's European Dominions"[65], in the Legislature Council and in the courts.

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63 H.W. Ryland, "Observations Relative to the Political State of Lower Canada", in A History of Lower Canada by Robert Christie, Montreal, Richard Worthington, 1866, VI, p. 117.

64 Ibid.

65 Ibid., p. 118.

Six years later, Ryland was more despondent about the political situation in Lower Canada because "the British and Commercial Interests may now be considered as excluded from the Assembly". Still, the country was not lost. Lower Canada "may yet be preserved to the Crown without recourse to the Bayonet. But the remedy must be immediate"[66].

An English nativist, like Ryland, fully believed that assimilation was possible with the aid of Britain, but as that possibility dimmed, he became a more extreme Francophobe and grasped at any medium to execute his desires. He was a bureaucrat ensconced in a secure colonial government appointment in which position he could launch a tirade of invective on the Canadians and really not be open to an attack on his livelihood. Union to Ryland represented new vistas of culture supremacy; whereas, for the English businessmen in Lower Canada, co-existence was much more possible because culture ranked second to money and thus union would be as equally desirable for them as for a nativist, but desirable primarily for different ends. For

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66 P.A.C., Series All, MG 24, Sir George Murray Papers 1814-1815, H.W. Ryland's "A Brief Review of the Political State of the Province of Lower Canada during the last seven years", May 12, 1814, p. 15.

the English mercantile class, a union that brought a better economic situation need not have also brought assimilation; whereas, a union that did not bring assimilation was useless to a nativist. As an English bureaucrat nativist, Ryland became much further removed from the realities in Lower Canada between 1808 and 1821 than did the English businessman.

By 1810 the English in Lower Canada, who still had closed minds regarding the Canadians, had two possible remedies to their problems, namely, reunion of Lower Canada and Upper Canada, or the granting of political representation to the English in the area known as the Eastern Townships[67]. Governor James Craig of Lower Canada offered a third in 1810.

The cross borne by a governor who endeavoured to govern the obstreperous Assembly burst upon the Colonial

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67 These were all the townships entirely east from the Richelieu River to the eastern boundary of Lower Canada which divided it from the states of New Hampshire and Massachusetts of which last state, Maine, formed a part in 1817. The townships were bounded on the south by the provincial boundary line, that is, the 45th degree of north latitude. To the northward their extension did not admit of any particular description, but they were usually understood to comprise the Townships which had been settled within the years 1787-1817 lying in the southern part of the districts of Quebec, Three Rivers and Montreal.

Office when Governor Craig[68] poured forth a scathing condemnation of the unbridled French in a massive lament which explained but did not excuse Craig's lack of diplomacy in dealing with the House of Assembly. The only measure, according to the Governor, which would afford just grounds of hope of retaining the province under the subjection of Britain, or of the preservation of its tranquility, and furtherance of its prosperity was "to deprive them (the French) of the constitution, as they term it, that is of that representative part of the government which was un-

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68 Sir James Henry Craig (1748-1812) entered the army at fifteen and was gazetted an ensign in the 30th Regiment. In 1774, he accompanied the 47th Regiment to America and was in action at Bunker Hill and Ticonderoga. He served as major of the 82nd Regiment in Nova Scotia, Penobscot, and North Carolina. At the close of the American war, he was transferred to the 16th Regiment as Lieutenant-Colonel. In 1794 he was made Adjutant-General of the Duke of York's army in the Netherlands and in the same year he was appointed to the rank of Major-General. In 1795, in conjunction with Major-General Alured Clark, he effected the capture of the Cape of Good Hope from the Dutch and was in charge of the government of that colony until 1797. He next served as Commander of a Division of the Army in Quebec and on his return to England in 1802 was placed in command of the troops in the Eastern District. In 1805 he was given the rank of local general in the Mediterranean and was placed in charge of an expedition which was to land in Italy and co-operate with a Russian army against Napoleon. These plans were changed by the battles of Ulm and Austerlitz and Craig returned to Sicily. Ill health compelled him to return to England in 1806. In August 1807, he was appointed Captain-General and Governor-in-Chief of Upper and Lower Canada. He resigned in 1811 and returned to England where he died in January, 1812.

questionably given them"[69].

He rejected a reunion of the two provinces because it would have produced a heterogeneous mixture of opposite principles and different interests from which no good could have been expected. A far better policy was to assure against a revolt in Lower Canada by keeping the "province of Upper Canada as a foreign and distinct population which may be produced as a resource against that of this country in case of necessity. It must always be interested in opposing revolutions of every sort here"[70].

Having rejected reunion, Craig did render some support for representatives from the Eastern Townships. Although the heterogeneous mixture of a reunion would still result, the Governor thought they would at least have some things in common with the French because they both lived in the same province. The crux of the problem, however, was the language barrier, for he could not conceive how a debate or business would be carried on in the Assembly when one part did not understand the other. The English in the Assembly attempted to establish communication, for Craig

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69 P.A.C., Series Q, MG 11, Vol. 112, Governor Craig 1810, Governor Craig to Colonial Secretary Liverpool, May 1, 1810, p. 142.

70 Ibid., pp. 144-5.

commented that "at present all the English that are in the House speak French"[71]; yet, they were still at a disadvantage, especially in debates of major importance, because all debates were in French, and the English lacked the opportunity to express themselves in their own language.

Perhaps the fierce denunciations of the French in his report reflected a frustrated desire to extinguish the French threat by cannon fire; yet, Craig did not attempt to influence Liverpool unduly, for he included in his despatch to the Colonial Secretary the views of two other individuals. One was identified simply as "a gentleman to whom I showed my despatch in confidence"[72], and the other was Jonathan

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71 Arthur G. Doughty and Duncan A. Arthur, eds., Documents Relating to the Constitution of Canada 1791-1818, Ottawa, King's Printer, 1914, p. 396.

72 P.A.C., Series Q, MG 11, Vol. 112, Governor Craig 1810, Craig to Liverpool, May 1, 1810, p. 193.

Sewell[73], who, according to the Governor, was one of the "few people in the province who from long residence, a spirit of observation and intimate knowledge of the people, is more competent to form a true judgment of the state of it, or to foresee the most effectual means of obviating the evils to which it is liable"[74]. Sewell, like Ryland, was an English bureaucratic nativist.

At the heart of the worthy "gentleman's" counsel was the advocacy of union because it would have destroyed, at once, the favourite wish and aim of the Canadians, to keep

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73 Jonathan Sewell (1766-1839). Born in Cambridge, Massachusetts, he was educated in Bristol, England. His parents had decided to leave America at the beginning of the American Revolution. Emigrating to New Brunswick in 1785 he eventually settled in Quebec in 1789 as a lawyer. His official career almost covered the entire existence of Lower Canada. After serving as solicitor-general of Lower Canada from 1793 to 1795 he became attorney-general until 1808 when he was appointed chief justice of the province, a position he held until 1838. Coinciding with his legal career was his political career. He sat in the Legislative Assembly from 1796 to 1808 as the representative for the borough of William Henry. From 1808 to 1829 he was president of the Executive Council and thereafter a member of that council. From 1809 until his death in 1839, Sewell remained as speaker of the Legislative Council. Impeached by the Assembly of Lower Canada in 1814, along with Chief Justice Monk of the Court of King's Bench of Montreal, he was completely exonerated in Britain.

74 P.A.C., Series Q, Vol. 112, Governor Craig 1810, Craig to Liverpool, May 1, 1810, p. 193.

themselves a distinct nation. He proffered that his measure could be foisted upon the Canadians under the ruse of a general policy of Britain. More despicable was the author's utter vindictiveness when he urged union rather than the deprivation of the Assembly for the Canadians because "it would have less the appearance of Punishment; it would be less humiliating and disgraceful, it would less hold them up to the world, as a people utterly unworthy of the benefits they have received"[75]. Ryland's brand of nativism found a worthy disciple in this "gentleman".

If French predilections in the minds of His Majesty's Canadian Subjects were not counteracted, "they will grow until by some crisis, force will be required and the future state and condition of Canada will then be decided by a recourse to arms"[76]. Thus echoing Ryland's ominous omen of conflagration, Jonathan Sewell, who was the Chief Justice of Lower Canada, reported to Craig the thoughts of the man in the highest legal position in the province. The deceased former Chief Justice William Smith would have viewed his son-in-law, Jonathan Sewell, with favour for the Chief Justice in 1810 was an exemplary representative of the Anglo-Saxon Protestant Loyalist element in Lower Canada.

So great was Sewell's fear of the Canadians' growing

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75 Ibid., pp. 210-211.

76 Ibid., p. 196.

demands that he was willing to procure Americans from the United States to accomplish an indispensable necessity, namely, "to overwhelm and sink the Canadian population (by) English Protestants" and thereby convert the province into an English colony to avoid Britain's ultimate loss of it. The entrance of the Americans into this English nativist's haven was a risk, but "less than that which we must incur by suffering the province to remain in its present state"[77].

Since a sufficient immediate influx of Americans was impossible, the pressing situation necessitated "an incorporate union of the two provinces of Upper and Lower Canada under one Governor-General and one legislature"[78]. Any reason he gave to support this action was eclipsed by his obsession to extricate himself from the antagnostic social environment in which he found himself.

Craig's triumvirate of advisers - Ryland, Sewell, and that "worthy gentleman" - were too deeply involved in their own attempt at self-preservation to ever consider that the Canadian prejudice might be an attachment founded in reason. Extremists they were, but they were extremists in defense of what they thought was right. This could explain

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77 Ibid., p. 200.

78 Ibid., pp. 202-3.

their actions and attitudes, but it could not excuse them because they thwarted the true end of government - to seek the good of the people. These nativists flourished when any challenge from the Canadians could be countered by the English in Canada supplemented by the Imperial Parliament. By 1810 England had done nothing officially to darken the hopes of the English in Lower Canada that the province would be a really English colony. In 1811, however, the official policy became conciliation towards the Canadians. This policy meant doom to the nativists who refused to conciliate and yet attempted to preserve themselves by fighting even stronger since Britain had abandoned them.

Before Colonial Secretary Lord Liverpool answered Craig's report of 1810, he sought the opinion of Attorney-General Sir Vicary Gibbs on questions regarding the power of the Parliament of the United Kingdom to alter the constitution granted to Upper Canada and Lower Canada in 1791; the competency of Parliament to unite the two provinces, and the legality of the king, to make new divisions of land and to appoint the number of representatives from these areas.

The Attorney-General concluded that the Parliament of the United Kingdom would be warranted in making such alterations in the constitution of Upper Canada and Lower Canada as the necessity of the case may require, but also pointed out that however necessary it might be to change the

constitution, there would be great dissatisfaction in the provinces from an alteration. Answering the second question more positively, Gibbs wrote that it would be competent to the Parliament of the United Kingdom to unite the two provinces into one government with one Council and Assembly and to make in that case such further regulations for the government of the said province as may appear expedient. Lastly, Sir Vicary Gibbs informed the Colonial Secretary that the Governor could not make new divisions and neither could he change the limits of the present ones nor alter the number of representatives fixed by George III[79].

In the letter accompanying this legal opinion, Lord Liverpool informed Craig why nothing would be done in Parliament regarding Canada at that time and urged the Governor by personal communications, to conciliate the most moderate amongst the Canadians and to reconcile them to the fair support of the government against the violent designs of the dissaffected and factious. As a realist, rather than an optimist, the Colonial Secretary further informed Craig that should conciliation fail, then he should assume a firm, temperate but persevering resistance to all the enroachments and usurpations of the assembly. In the event of an impasse between the Governor and Assembly,

79 P.A.C., Series Q, MG 11, Vol. 113, Governor Craig and Miscellaneous 1810, Gibbs to Liverpool, August 22, 1810, pp. 203-206.

Liverpool advised continued prorogations of the Assembly rather than dissolutions unless there was a chance of a more co-operative assembly[80].

Craig's lament of 1810 had not fallen on infertile ground, for Liverpool outlined a suggestion that undoubtedly heartened the Governor:

> If it should ever be discerned in a way in which it could be proved, that a connection or correspondence subsisted between the leaders of the House of Assembly and the enemies (France) of this country, they (His Majesty's Ministers) have no doubt that upon such proof being brought before a secret committee of Parliament . . . the Parliament would . . . adopt any measure which might be necessary for the security of the Province, even if it should go the length of abolishing the Assembly altogether[81].

The fact that the Colonial Secretary even suggested this novel approach reflected sympathy for Craig's position; yet this suggestion, which was made during war, could change during peace.

A special situation could arise in Lower Canada "which might render it advisable to call upon Parliament for aid and assistance in uniting the two provinces of Upper Canada and Lower Canada or in otherwise altering the

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80 P.A.C., Series Q, MG 11, Vol. 97A, Lower Canada, Despatches to Governors 1805-1811, Liverpool to Craig, September 12, 1810, pp. 162-172.

81 Ibid., p. 171.

constitution of the latter"[82], but the situation of 1810 was inadequate to merit the absolute necessity of resorting to any of them.

Unlike Craig, Governor Prevost[83] did pursue a policy of conciliation, for he realized that the only way to succeed in the accomplishment of any objective he sought was through his "conciliating the Canadian representation". Unlike Ryland, he could not bring himself to think "that they (the Canadians) are either at present or likely soon to become hostile to His Majesty's Government"[84].

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82 Ibid.

83 Sir George Prevost, 1767-1816. Before receiving his commission as governor-in-chief of Canada in 1811, Prevost had served as the military governor of the former French island of St. Lucia from 1798 to 1801 with the rank of brigadier-general and then as civil governor of that island from 1801 to 1802. After his term of governor of Dominica from 1802 to 1805, he was appointed lieutenant-governor of Nova Scotia where he remained until he received his commission for Canada. His success in governing Lower Canada was overshadowed by his military reverses at Sackett's Harbour in 1813 and the defeat at Plattsburg in 1814.

84 P.A.C., Series All, MG 24, Sir George Murray Papers 1814-1815, Sir George Prevost to Lord Bathurst, September 4, 1814, p. 19.

At the same time, however, Prevost informed Bathurst that any continuance of similar contests between the Legislative Assembly and the Legislative Council to those such as the impeachment in 1814 of Chief Justice William Monk of the Court of King's Bench for the District of Montreal and Jonathan Sewell, Chief Justice of Lower Canada, would impede the public service, embarrass the executive and ultimately weaken the loyalty and attachment of the people to Britain. According to Prevost, the only possible remedy to improve the political situation in Lower Canada was "a perseverance in the conciliating course I have already adopted with regard to the Canadians, together with an increase of the Legislative Council"[85].

Sir John Coape Sherbrooke[86], as governor of Canada

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85 Ibid., p. 20.

86 Sir John Coape Sherbrooke (1764-1830). Born in England as John Coape, he took the name of Sherbrooke on his marriage in 1756 to one of the co-heiresses of Henry Sherbrooke of Oxton, Nottinghamshire. Having entered the army in 1780 as an ensign he rose to the rank of full general by 1825. During the wars with France, he served in the Netherlands, India, Sicily, Egypt and in the Peninsula. In 1809 he was second in command to General Wellesley. The following year, ill health forced him back to England. Appointed as lieutenant-governor of Nova Scotia in 1811, he successfully defended that colony in the War of 1812 and as well led an expedition up the Penobscot River in 1814. In 1816 he became governor of Canada and resigned that position in 1818 to retire in England.

from 1816 to 1818, also attempted a policy of conciliation in his administration of Lower Canada because he believed that the French in Lower Canada were a far better bulwark against American infiltration into the Canadas than the Upper Canadians. A reason for that belief was that "the Catholics in Lower Canada have a rooted antipathy to the Government of the United States, and have no dread equal to that of one day falling under its Dominion"[87]. Sherbrooke, however, counselled Colonial Secretary Bathurst in 1822 that "Union would be very desirable if these Provinces continue in the same state they were in at the time I relinquished the government"[88]. Although Governor Sherbrooke advised Union, it will be shown in the next chapter that his counsel included considerations and admonitions that reflected some hesitancy about the feasibility of Union.

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87 P.A.C., Series Q, MG11, Vol. 163, pt. 1, Papers Collected by Mr. Wilmot-Horton on the Canada Bill 1822, Sherbrooke to Bathurst, March 14, 1822, p. 187.

88 Ibid., p. 186.

Governor-General Richmond[89] could have urged union or the creation of new townships with representatives or the deprivation of the Canadians of the Assembly as a means of settling the problems of Lower Canada. His financial secretary, John Young, informed Stuart Wortley, a British member of Parliament, that "the Duke has written Lord Bathurst, that the radical cure for the errors of the constitution of this government is to unite the legislatures of Upper and Lower Canada, leaving all other matters as they are except the revenue and expenses of government"[90].

Young read too much into Richmond's ideas. Governor-General Richmond did not advocate a union, but he did advocate the resurrection of the British commercial empire of the St. Lawrence the channel of transportation

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89 The Duke of Richmond, Charles Lennox (1764-1819). He entered the British parliament in 1790 and served until 1806 when he succeeded his uncle in the dukedom. From 1807 to 1813 he was lord-lieutenant of Ireland and in 1818 he was appointed governor-general of British North America. He died near Richmond, Upper Canada in 1819.

90 P.A.C., Series Q, MG 11, Vol. 153, pt. 2, Miscellaneous 1819, John Young to Stuart Wortley, May 15, 1819, p. 482.

and exportation in British bottoms for the trade of the interior of North America[91]. To facilitate this aim he wanted a bill passed by the Imperial Parliament to regulate trade between Upper Canada and Lower Canada and the United States by the St. Lawrence. The Canadas had to relinquish all powers to regulate their trade with each other; otherwise the trade with United States in British ships would not flourish.

This grandiose plan would also have a definite effect on the politics of Lower Canada. Richmond urged that if Britain controlled the regulation of trade, then there would be "a fixed income which will enable the Crown in Lower Canada to support the civil list of the province without the necessity of an annual appeal to the provincial legislature for that purpose"[92].

While Richmond's suggestion was being contemplated, a situation arose in Upper Canada that eventually was carried personally to the Colonial Secretary in London and there it became involved in discussion about the civil list and the economy of Lower Canada - a discussion which

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91 P.A.C., Series Q, MG 11, Vol. 152, Governor the Duke of Richmond and Acting Governor James Monk 1819, p. 315.

92 Ibid., p. 313.

culminated in a proposal to unite Lower Canada and Upper Canada.

The tax-sharing agreement between Lower Canada and Upper Canada ceased in 1819 and during the following two years Upper Canada claimed its lack of revenue from duties on foreign imports precluded an adequate amount of funds for the civil government, the province's creditors and the development of public works. This provincial problem culminated in a number of joint resolutions to Britain by the Legislature Council and House of Assembly of Upper Canada. One of the more important resolutions was:

> Resolved: that it is the opinion of this House that this province, having looked for two years (1819-1821) in vain for an opportunity of attempting an amicable arrangement and having at last thus completely failed in the attempt, has no longer any alternative but to surrender all its just claims for the past and to continue in the future in a state of dependence on the legislature of another colony, which was never either expedient or just, but which had been patiently borne while a spirit of accommodation sustained mutual confidence, and until the commissioners of Lower Canada openly made that confidence a matter of reproach; as to address itself to our Gracious Sovereign . . . entreating his royal recommendation to his Imperial Parliament to exercise its undoubted right to control all imports and exports in and from the British port of Quebec and to

establish such regulations respecting commercial intercourse between the two provinces as may comport with the just rights and interests of both[93].

As Governor Craig had despatched his Civil Secretary, Ryland, to bear his report of 1810 to Lord Liverpool so that Ryland could urge the importance of the report on the Colonial Secretary and others, Lieutenant-Governor Maitland[94] of Upper Canada despatched Attorney-General

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93 P.A.C., Public Archives of Canada, "Resolutions of the Legislative Council and House of Assembly of Upper Canada, on the subject of its financial relations, with the Province of Lower Canada, passed in the second session of the Eighth Provincial Parliament, January 8, 1822", Union of the Legislatures of Upper Canada and Lower Canada, Pamphlet No. 1-1125, p. v.

94 Maitland, Sir Peregine (1888-1854). Maitland who was born in Hampshire, England, entered the army in 1792 and served in Flanders (1794-1798); in Spain (1809 and 1812). Promoted to major-general in 1814, he took part in battle of Waterloo. Lieutenant-Governor of Upper Canada, 1818-1828; Lieutenant-Governor of Nova Scotia, 1828-1834; Commander-in-Chief of the Madras army, 1836-1838; Government Commander-in-Chief at Cape of Good Hope, 1844-1847.

John Beverly Robinson[95] in 1822 to present the Upper Canadian finance problem before Colonial Secretary Lord Bathurst. Lieutenant-Governor Maitland entrusted Attorney-General Robinson with the commission at the joint request of the other branches of the legislature. Maitland readily concurred in the legislature's choice "as he (Robinson) is in my confidence and no one (is) more capable

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95 J.B. Robinson, 1791-1863. Born at Berthier Quebec, educated at Dr. Strachan's school at Kingston, he began the study of law in the office of D'Arcy Boulton, Solicitor-General of Upper Canada. He served in the Niagara campaign of 1812 as lieutenant in the third regiment of York Militia and was under fire at the battle of Queenston Heights. The death of Lieutenant-Colonel Macdonnell, the Attorney-General of the Province at Queenston and the imprisonment of Mr. Boulton at Verdun in France, left the Government without the resources of its regular law officers. Robinson was appointed acting Attorney-General and served as the sole law officer of the Crown during the remaining period of the war. Mr. Boulton, who was released on the restoration of peace, was promoted to the office of Attorney-General while Robinson succeeded in February, 1816 as Solicitor-General. In 1818, on Boulton's appointment to the Bench, Robinson became Attorney-General of the Province. He represented York in the Assembly from 1821-1829 and was recognized a leader of the Government Party. In 1829, he succeeded Sir William Campbell as Chief Justice of the Province and was at the same time appointed to the Executive Councils. He acted as president of the Executive Council until 1832 and as Speaker of the Legislative Council until 1838.

of affording your Lordship all the information that can be required"[96]. Arriving in March, 1822 and having informed Bathurst of his presence and purpose, the Attorney-General discovered that the recently appointed Colonial Under-Secretary, Robert John Wilmot, was soon considering the Upper Canadian financial problem in conjunction with a project of great significance, namely, the reuniting of the provinces of Lower Canada and Upper Canada.

The greatest omission made by Britain in the Canada Bill of 1791 was a precise division of power between the executive and the legislature. To provide an assembly, but to fail to mark the duties and powers of that assembly precipitated an attempt by the assemblies in both provinces to obtain as much power as possible. The governor, who usually had his duties stated in his commission and who received instructions from Britain was at a disadvantage because he had to execute his orders in a changing political situation; whereas, the assembly had no Imperial directives. With no definite division of power, the assemblies assumed a claim to the powers of the British House of Commons because that was the part of British

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96 P.A.C., Series Q, MG 11, Vol. 331, Lieutenant-Governor Sir Peregine Maitland 1822, Maitland to Bathurst, January 22, 1822, pp. 2-3.

government they most closely mirrored; yet, the governor did not attempt to claim the power of the king even though he was the king's representative in a province.

The English merchant in Lower Canada, thrust into the role of a minority on the defensive was generally able to create a life isolated from that of the Canadian. There were other English who lacked the financial independence, but had good positions in the civil government. This part of the minority, unable to preserve itself without the government, sought the best possible government wherein an English society could function. When it appeared impossible that such a government would ever exist in Lower Canada, this bureaucratic English element agitated for relief from Britain. Their hopes crested when they had a governor like Sir James Craig who shared their aversion to the Canadians.

This bureaucratic element or official group in the English minority earnestly sought the assimilation of the French. Should the government of Lower Canada ever become totally Canadian, the English nativists had the most to lose. Union to the nativists meant primarily assimilation and political control; whereas, union to the merchants meant primarily more profit and political control.

CHAPTER II

PREPARATION OF THE UNION BILL AT THE COLONIAL OFFICE

On the formation of a new ministry, when many posts were vacant, secretaries of state could choose their aspirants for office. When a ministry, however, had been long in office, as was the Liverpool ministry in 1821, a vacant under-secretaryship was a position in which the whole ministry took an interest. Lord Bathurst, the Colonial Secretary, appointed Robert John Wilmot to succeed Henry Goulbourn as the colonial under-secretary of state. It is possible that Wilmot's appointment may be ascribed to the efforts of Robert Peel and Henry Goulbourn, the First Commissioner of Land Revenue and the Chief Secretary of Ireland respectively in the British ministry of 1822, for the purpose of initiating a scheme of emigration for the relief of Ireland. Others, such as E.H. Jones, the biographer of Wilmot-Horton, found little evidence to support this idea[1].

Robert John Wilmot was also known by his acquired surname, Wilmot-Horton, the name he took on May 8, 1825

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1 D.M. Young, "The Working of the British Colonial Office" 1812-1830, unpublished thesis at the University of London, England on microfilm at the Public Archives of Canada, p. 56.

in compliance with the direction of his father-in-law's will. This chapter, however, will refer to him as Wilmot because the material therein transpired before his surname changed.

When Wilmot assumed his position of colonial under-secretary, he had had no previous official or colonial experience. He had, however, determined some aims, namely, that it was necessary to find a compromise solution to the religious problem regarding Ireland; secondly, to exert every effort to persuade his countrymen that the problem of unemployment could be solved by a planned large scale emigration to the colonies under the direction of the state[2]; and thirdly, regarding the colonies of England, he thought that they could be used to absorb emigrants from England and thereby relieve some of the economic and social problems; that the colonies could be very important to England, not only for the English emigrant absorption but also as an area of investment by London industrialists and bankers[3]. Such were the main concerns of Wilmot, who assumed his new position of colonial under-secretary of state on December 11, 1821 and who would in a little over six months, rise in the British House of Commons on June 20, 1822 to introduce a bill

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2 Ibid.

3 Helen Taft Manning, The Revolt of French Canada 1800-1835, Toronto, 1962, p. 245.

entitled "A Bill to make more Effectual Provision for the Government of the Provinces of Lower and Upper Canada, to regulate the Trade thereof, and for other purposes relating thereto"[4].

Although the bill had a relatively short preparation period, it did have an interesting origin. The one half of the bill, that is, the portion dealing with trade and commerce, had a long history. In the year 1793 commissioners were first appointed by Lower Canada to treat with Upper Canada respecting the collecting of duties at the port of Quebec and the payment of drawbacks, that is, the portion of the duties that Upper Canada would receive. An agreement was made between the two provinces to the effect that Upper Canada was not to impose duties on goods imported into Lower Canada; and that one eighth of all duties levied in the Lower Province should be paid to the Upper Province. This contract was to be in force until December 1796. In 1796 a second commission of arbitration with Upper Canada was appointed. In the year 1798 the powers of this commission were prolonged, and its numbers increased. In the next year, 1799, they completed a contract to attempt to ascertain

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4 P.A.C., Series Q, Vol. 163, pt. 1, Papers Collected by Mr. Wilmot-Horton on the Canada Bill 1822, pp. 9-19. Hence forth these papers will be referred to as Wilmot Papers.

the actual consumption of goods by Upper Canada by stationing a government inspector at the Coteau du Lac at whose office all boats and carriages passing from the Lower Province to the Upper were to report. This general procedure was followed until 1817 and it was of little use because the custom station was easily avoided by those desiring to do so.

In the year 1801, the two provinces reviewed the old contract for a third time. In 1804, there was another appointment of commissioners and in 1805 the contract was again confirmed. In 1811, the agreement was continued until 1814; in that year it was further prolonged until 1816. In 1817, commissioners were again appointed to meet; and in the interval twenty thousand pounds were paid to Upper Canada on account. In 1818, a new compact was made with Upper Canada, the effect of which was that one fifth of all duties was to be paid to the Upper Province, and that no import duties were to be levied there. The agreement of 1818 expired in 1819, and the Lower Canadian Legislature, embroiled in internal disputes between the Governor and the Assembly for control of the finances, did not appoint any delegates to confer with Upper Canada until 1821. When the representatives of each of the two provinces met, they parted without reaching any agreement. Without its share of the revenue, Upper Canada found it difficult to accumulate sufficient funds to finance planned public works.

In addition, the Upper Province felt that its finances were unduly controlled by the legislature of Lower Canada. The legislature of Upper Canada took the problem to the Imperial Government in London and despatched Attorney-General, John Beverly Robinson, to England as a special commissioner to present the Upper Canadian position. Robinson arrived in England on March 22, 1822. As duly commissioned, he notified Lord Bathurst of his presence on March 26, 1822 pointing out that he had been commissioned to present a joint address of the Legislative Council and the Legislative Assembly on the subject of the financial relations with Lower Canada.

There were others who noted the mission of Robinson besides the legislature of Upper Canada, such as, the company of Hart Logan located in Montreal[5]. In a letter from the company to Edward Ellice in England it was noted:

> Accounts arrived yesterday (January 30, 1822) that the Legislature of Upper Canada had appointed their Attorney-General, Mr. Robinson, (a person of talent) as Commissioner to represent to the British Government the necessity of their taking the regulation of the port of Quebec into their hands and putting both provinces on an equal footing with respect to the Custom duties levied at that port - a far better measure we hope will be proposed and every energy of the Commercial Men employed to bring it about, namely a reunion of the two provinces, for we cannot look forward to any interference on the part of the Imperial Legislature

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5 The Montreal Directory of 1820 has the following notation: Logan and Company, Hart, merchants, 6 St. Sacrament St., p. 98.

> at this late period, without deprecating those half measures or illusory expedients which (weak) or ignorant Administrations adopt to remove evils to a little distance or to serve their own temporary or narrow views of convenience.
>
> Any interference with respect to the port of Quebec would create as much clamour as the reunion of both provinces, and there is really no hope of rendering Canada useful as an appendage to the British Empire, rendering it a proper asylum for emigrants, and of ever developing its commercial resources except by the great measure of uniting Upper and Lower Canada.
>
> The Legislative quarrels within the province are likewise aggravating the distress and uncertainty of trade, for the House of Assembly have resolved not to renew the duties on Tea, Rum, Wine and Molasses, which will consequently cease on 1st May next.
>
> If your ports open for Colonial Grain in February or May next there may be some return of tolerable trade, but if otherwise this Country cannot find any means of paying for half of its useful Importations[6].

Edward Ellice's father, Alexander, had taken the English side in the American War of Independence and as a result had departed for Montreal and had founded the firm of Inglis, Ellice and Company. He was also the managing director of the Hudson's Bay Company, supplied a large amount of capital for the fur trade and eventually established a branch of his firm in London, England about 1800. Edward, his third son, after graduating from Aberdeen University with

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6 P.A.C., Series Q, MG 11, Vol. 332, pt. 1, Public Offices and Miscellaneous 1822, extract of a letter from Messrs. Hart Logan and Company to Edward Ellice, January 31, 1822, pp. 114-115. The letter was unsigned but in Logan's hand.

a Master of Arts degree in 1800, became a clerk in the London branch and in 1803 he went to Canada where he engaged in the fur trade. He came to Lower Canada two more times and on each occasion stayed for about a year[7]. On these occasions, he had become involved with the three main fur trading companies, namely, the Hudson Bay Company, the North-West Company and the XY Company, so that in 1820, when the possibility of amalgamation of all three was under discussion, Lord Bathurst, the Colonial Secretary, requested Edward Ellice to direct the negotiations.

In 1822 Ellice had represented the constituency of Coventry for four years in the British House of Commons. In his early parliamentary career, he was considered a radical and had among his friends such fellow radicals as Sir Francis Burdett and Samuel Whitbread. Edward Ellice, son-in-law of Lord Grey, who was leader of the Whig party, provided great influence for the English Canadian mercantile group in the Imperial government. As the seigneur of Beauharnois near Montreal, he had a vested interest in the affairs of Lower Canada; as a friend of some of the leaders of the Montreal merchants, such as, Hart Logan and John Richardson, he was able to attempt to make their aims better

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7 P.A.C., Report from the Select Committee on the Civil Government of Canada, Reprinted at Quebec, 1829, p. 36. Henceforth this reference will be cited as Report from the Select Committee on the Civil Government of Canada.

known in the British Parliament. Although the link between John Richardson, a Montreal merchant and acknowledged leader of the English party, and the Ellice family, may be traced back to at least 1781[8], Richardson's correspondence was mostly with Ellice's father, Alexander, or his brother, William, until the early 1820's when Canadian problems regarding agriculture, politics, finance and the fur trade caused a concentration of Canadian problems to be directed to England.

Edward Ellice admitted in the House of Commons that he had originally suggested and pressed the measure on the Colonial Office. It was on July 18, 1822, during the second reading of the Canada Government and Trade Bill, as Wilmot's bill became termed in Parliament, that the member from Coventry stated his role. The account of his speech recorded:

> That (as) he (Mr. Ellice) had originally suggested and pressed the adoption of this measure on his majesty's ministers as the only one calculated to promote the permanent interests both of the colonies and the mother country, and infinitely preferable to other expedients that had been

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8 P.A.C., Series A2, MG 24, Vol. 1, Ellice Papers, Richardson to Alexander Ellice, February 2, 1781, pp. 301-302.

> advised, to meet existing difficulties, which rendered an application to parliament in the present situation indispensable[9].

It has not been established exactly who was the initial recipient of Ellice's overture. Helen T. Manning claimed that it was Wilmot, because Ellice "was probably counting on his inexperience, as well as on his deep respect for the opinions of those engaged in overseas commerce, which (would) enable the new under-secretary to sponsor that measure"[10]. Ellice, however, had had closer contacts with the Colonial Secretary, Lord Bathurst, as a result of the amalgamation of fur companies in the Canadas. The Ellice-Bathurst link was inferred by DeCelles on the grounds that Ellice was "a resident of London, very influential with the colonial minister"[11].

Mason Wade was more general, for he credited the son-in-law of Lord Grey with bringing "their (interested merchants') views to the ears of the ministers, and all but achieved the union of the Canadas"[12].

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9 Hansard Parliamentary Debates 1820-1830, Second Series, 1822, Vol. VII, column 1706.

10 Manning, op. cit., p. 248.

11 Alfred D. DeCelles, "Papineau and Cartier" (Makers of Canada), Toronto, 1910, X, p. 47.

12 Mason Wade, The French-Canadians 1760-1945, Toronto, 1955, p. 129.

At any rate, if he was not already lobbying for union by January, 1822, the letter from Hart Logan moved him to act, for by April, 1822, he was recognized as "the great promoter of the union"[13]. In this promotion he was aided by Wilmot who "had become an ardent supporter of the measure" by March, 1822[14].

Wilmot, the newly appointed under-secretary, had to establish a legal and reasonable basis for any change in the governmental structure of the Canadas. In a note found among Wilmot's papers on the bill, there was included a statement by Pitt, the Prime Minister in 1791 who advocated the division of the province of Quebec, to the effect that "Mr. Pitt said 'The assemblies ought undoubtedly to be extended with the growing population of the country'"[15].

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13 P.A.C., Upper Canada Sundries, Vol. 56, Robinson to Hillier, April 22, 1822, p. 28576.

14 William Ormsby, "The Problem of Canadian Union 1822-1828", Canadian Historical Review, Vol. 39, No. 4, December, 1958, p. 280.

15 P.A.C., Wilmot Papers, p. 40. During the debate on the Canada Bill of 1791 on April 8, 1791, Pitt was questioned about the small number of representatives in the new assemblies. Pitt answered that "according to the present state of the colony and the population in that province (it was a question) whether the assemblies could be made more numerous than was proposed. The House would, however, have the goodness to consider that there was not the smallest idea that the assemblies should not be increased when the population of the province increased. The assemblies undoubtedly ought to be extended with the growing population of Canada". See Hansard, et. al., The Parliamentary History of England, Vol. 29, April 8, 1791, p. 111.

Wilmot's accepted population estimate for the comparison of 1791 and 1822 stated Lower Canada in 1791 with 100,000 inhabitants and that of Upper Canada as 10,000; whereas, in 1822 the estimate for Lower Canada was 400,000 to 500,000 and that of Upper Canada as 140,000[16].

From Pitt's statement and from the population rise in each province, Wilmot concluded that if the Assembly was not properly constructed at first, it must be recollected that it was subject to revision. There was nothing to hinder the Parliament of Great Britain from converting anything that might thereafter appear to want correction. Thus was established the theory of revision. There was no question in his mind that the Imperial Parliament had the power and right to legislate for a colony. He acknowledged that the Canadas had not been consulted and that they had made no application for union. This, however, posed no problem, for the proposed object was simply to amend the Canada Constitution of 1791 in areas other than the Executive and Judiciary departments[17].

The actual legal basis for the right to alter the

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16 P.A.C., Wilmot Papers, p. 40.

17 Ibid., pp. 46-48.

Canada Bill of 1791 was the second section of 31 George III c. 31. The pertinent part of the second section reads:

> . . . and in each of the said Provinces, respectively, His Majesty, His Heirs, or Successors, shall have Power during the Continuance of this Act, by and with the Advice and Consent of the Legislative Council and Assembly of such Provinces respectively, to make Laws for the Peace, Welfare and good Government thereof, such Laws not being repugnant to this Act . . .[18]

In each statement used to justify action there was a distortion. In the first, the reference to Pitt ignored his additional advice that division of the province was the last means to effect a future union of all Canada in which all would prefer English laws and the English constitution. Divided, the French would freely realize the superiority of the English. That realization would happen, according to the Prime Minister of England in 1791, more probably if the government did not suddenly undertake to submit all the inhabitants of Canada to the Constitution and laws of England[19]. Although the Canada Bill of 1822 did not strike at the legal system of Lower Canada, it did

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18 Adam Shortt and Arthur G. Doughty, "The Constitutional Act of 1791", Documents Relating to the Constitutional History of Canada 1759-1791, Ottawa, 1907, p. 695.

19 T.C. Hansard et. al., op. cit., Vol. 29, April 8, 1791, p. 113.

attempt to limit French Canadians in their participation by having high property qualifications, by demanding all documents to be written in English and by proscribing the use of French in the Legislature after 1837.

The Canada Act of 1791 did give His Majesty's government power to legislate for the Canadas, but any such legislation was to be with the consent of the Legislative Council and the Legislative Assembly except in a few specified instances dealing with trade. This check on Britain's legislative power, however, was ignored, as was Pitt's advice.

More telling than either of the above claims for the power of the Imperial Parliament to alter the Canada Act of 1791 was the impermanence theory or the theory of circumstantial expediency, which was expressed as follows:

> It was foreseen, however, at the time of division (1791) of the province, that the most convenient (measures) perhaps on several accounts in the actual state of the colony would be attended with inconveniences which might be increased with the growth of the country and render a reunion in future times advisable. Accordingly, it appears neither to have been proposed nor enacted as an arrangement which was to be certainly permanent but rather as a temporary measure suited to existed circumstances and which a change of those circumstances might require to be altered[20].

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20 P.A.C., "Canada Bill", Wilmot Papers, p. 75. I attributed this unsigned and undated document to Robinson. For my reasons, see the passages after the designated reference.

In the Wilmot Papers the above passage was found in the section "The Canada Bill", which had three headings, namely, change in the constitution by uniting the legislature, providing for the trade of the provinces, and regulating their financial concern with each other. The possibility of ascribing it to Robinson rests on a similarity in writing style in "The Canada Bill"[21] and in letters from Robinson to Major George Hillier, the secretary of Lieutenant-Governor Maitland in Upper Canada[22].

A stronger case could be built on the similarity of emphasized items in "The Canada Bill" and in the petition borne by Attorney-General of Upper Canada to the Imperial Parliament. Economic factors dominated the memorandum in the Wilmot Papers with special stress on the hardships of Upper Canada as a result of the economic control the Legislative Assembly of Lower Canada exerted through the control of the port of Quebec, the advocacy of British Parliamentary interference between the two provinces as to commercial regula-

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21 C.O. 42, Vol. 193, Reel No. B-149, Wilmot Papers 1822, Public Archives of Canada, pp. 83-87.

22 P.A.C., Upper Canada Sundries, Vol. 56, Robinson to Hillier, April 22, 1822, pp. 28574-28579 and Robinson to Hillier, August 23, 1822, pp. 29619-29626.

tion and payment of drawbacks and the view of union:

> A just remedy for the post must be provided by the British Parliament. It might be found not impossible to provide in some manner, tho' perhaps not altogether effectually for the regulation of the future and however advisable it may be, it is not absolutely necessary, nor does it appear to be considered so in either province to unite their legislatures in order to prevent the recurrence of these particular (financial and commercial) inconveniences . . . . It appears, however, to be a powerful inducement to such a measure . . . which His Majesty's government with just regard to the future and permanent welfare of both great provinces has been lead to entertain[23].

Upper Canada's representative at the Colonial Office expressed similar thoughts in April, 1822 when he pointed out to Wilmot that the petition from the Legislature of Upper Canada to Lord Bathurst illustrated how the offices of the two provinces could be placed on a firm footing with respect to each other without reference to any union of their legislatures. Robinson wrote:

> I must declare that I see no reason for supposing that an union of the Legislatures is required on this ground. Union would be a means of remedying the financial concerns of Upper Canada and Lower Canada if the legal and constitutional right of Britain to control both in financial matters, but the right is undisputed. I submit . . . that such a union would by no means get rid of the principal part of the disagreement, the claims of Upper Canada for the past[24].

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23 P.A.C., Wilmot Papers, p. 79.

24 Ibid., Robinson to Wilmot, April 23, 1822, p. 102.

Wilmot was strengthened rather than weakened by Robinson's view, for although the Upper Canadian Attorney-General was against union, he had asserted another strong legal basis for Imperial interference, for Robinson wholeheartedly concurred in the idea that Britain had the right and power to interfere. When relations had been better between Lower Canada and Upper Canada difficulties in adjusting the proportion of duties and in the regulation of commercial intercourse had been arranged by "amicable agreement", but "it has now (1822) been found necessary to refer to the decision of the Imperial Government, an emergency foreseen as a probable consequence of the separation (in 1791) when the 31 George III c. 31 was passed and for which a power of providing a remedy by the intervention of

the British Acts is reserved by that statute"[25]. Thus this member of the Family Compact considered the financial problem an emergency situation; a situation that could not be resolved by colonial politics. Only as a last resort did Upper Canada appeal to Britain for intervention. The appeal would not have been made if the probability of satisfaction was not high; after all, Britain had changed the Constitution for the English in Upper Canada in 1791.

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25 Ibid., pp. 100-101. The pertinent section of 31 George III c. 31, the Constitutional Act of 1791, was clause XLVI. The clause stated "And whereas it is necessary, for the general Benefit of the British Empire, that such Power of Regulation of Commerce should continue to be exercised by His Majesty, His Heirs, or Successors, and the Parliament of Great Britain, . . . with respect to the Application of any Duties which may be imposed for that Purpose (the regulation of commerce): Be it therefore enacted . . . That nothing in this Act contained shall extend or be construed to extend, to prevent or affect the Execution of any Law which hath been or shall at any time be made by His Majesty, His Heirs, or Successors, and the Parliament of Great Britain, for establishing Regulations of Prohibitions, or for imposing levying, or collecting Duties for the Regulation of Navigation, or for the Regulation of the Commerce to be carried on between (Lower Canada and Upper Canada), or between either of the said two Provinces and any other Part of His Majesty's Dominions, or between either of the said Provinces and any Foreign Country or State, or for appointing and directing the Payment of Drawbacks of such Duties so imposed, or to give to His Majesty, His Heirs or Successors, any Power or Authority, by and with the Advice and Consent of such Legislative Councils and Assemblies respectively, to vary or repeal any such Law or Laws, or any Part thereof, or in any Manner to prevent or obstruct the Executive thereof." See Adam Shortt and Arthur G. Doughty, op. cit., p. 707.

Wilmot had two legal foundations on which to base his claim for Imperial intervention, namely, a rather weak political basis in the clause "during the continuance of the Act" and a strong economic clause permitting specified intervention. In addition, he had not only the revision theory gleaned from Pitt's words, but also possessed the impermanence or circumstantial expediency theory as a basis for legislative action.

Having considered the constitutional basis of the power of the Imperial Government to bring in such legislation as the Union Bill, an attempt will be made to relate how eleven men participated in the preparation of the Bill. These men were: Robert John Wilmot, Edward Ellice, Charles Marshall, James Monk, John Caldwell, William Osgoode, John Beverly Robinson, the Reverend Doctor Strachan, Lord Bathurst, Lieutenant-Colonel John Sherbrook and James Stephen. The roles of Ellice and Wilmot have been described briefly; they will be discussed in the next chapter on the introduction and debates on the Union Bill in the House of Commons since they were the only two of the eleven who spoke to Wilmot's motion of June 20, 1822.

In 1816 Sir John Sherbrooke, the Governor of Lower Canada, informed Lord Bathurst of the necessity of sending over a Solicitor-General from England. On the reference of Lord Chief Justice Gibbs, Bathurst appointed Charles

Marshall to the position of Solicitor-General of Lower Canada. Marshall claimed that he assumed the position with the understanding that there would be good emoluments, that the Attorney-General's position was to be vacated soon and if he proved satisfactory, he would become Attorney-General.[26]

On his arrival at Quebec in the spring of 1817, the prospects of any of his expectations reaching fruition were so dim that he sincerely considered returning to London and it was only Sherbrooke's confidence of a better future that detained him. His position did improve, for Attorney-General Uniacke asked his help in the conduct of criminal cases and by the summer of 1817 the Governor-in-Council had directed him to act jointly with the Attorney-General in all criminal matters. In fact, in 1819, Uniacke left for England and it was assumed that he would not resume his office on his return. At this point, Sherbrooke advised and recommended Marshall to inquire from Bathurst regarding the Attorney-General's position if it did become vacant. Marshall claimed that Richmond had said that Bathurst's answer was positive.

From 1819 to 1821, Marshall executed the tasks of

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26 P.A.C., Series Q, MG 11, Vol. 162, pt. 2, Public Officer and Miscellaneous for Lower Canada 1822, Marshall to Wilmot, May 20, 1822, p. 278.

both Solicitor-General and Attorney-General and, of course, gained the salary from both. His future darkened in June 1821 when Uniacke returned and resumed his office of Attorney-General at Quebec. The only thing worse than the resulting decrease in salary was that Uniacke's return reduced Marshall to a subordinate situation. Unable to tolerate the change in events, Marshall applied for a leave of absence from Lord Dalhousie to go to England "principally for the purpose of ascertaining what prospect there was of (his) promotion to the office of Attorney-General"[27].

Bathurst sympathized with Marshall's plight and urged Dalhousie that Marshall be employed in criminal prosecution[28]. Later in the summer of 1822, when Marshall went to Quebec bearing Bathurst's letter of support, Dalhousie still refused to accommodate him, so Marshall returned immediately to London to press for further investigation into the matter[29].

This adviser of Wilmot's had at the most four years experience in Lower Canada and it was he who drew up the

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27 Ibid., p. 280.

28 Ibid., Bathurst to Dalhousie, July 5, 1822, p. 306.

29 Ibid., Marshall to Wilmot, November 20, 1822, p. 306.

Union Bill[30]. Marshall submitted an extensive brief on the Civil List question, was involved in the economic and political aspects of the bill, and commented briefly on a religious problem.

In his religious views, he was moderate. Wilmot requested him to state an opinion on the objection raised by Bishop Plessis of Quebec to the clause regarding the erecting of parishes and appointing rectors in Lower Canada by which the rectors would hold their cases "during pleasure" and their "actual residence" in their respective parishes.

Marshall readily saw such a law could strengthen the Crown's influence and noted that "that restriction (was) introduced not by inadvertence, but in compliance with constant usage by which all offices in the colonies are so limited". As a realist rather than an optimist he noted, however, that "the limitation in the present instance is not absolutely necessary to retain, more especially as it appears so obnoxious to the Bishop (Plessis) to whose opinion on such a subject one should wish to pay great deference". To restrict the present power of the Church by limiting the power of its head in Lower Canada would need-

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30 Robert Wilmot-Horton, Exposition and Defence of Earl Bathurst's Administration of the Offices of Canada When Colonial Secretary During the Years 1822 to 1827 Inclusive, London, England, 1838, p. 5.

lessly divorce the Church's support from the government. Consequently, his "humble opinion (was) that the passage to which the Lord Bishop objects should be omitted"[31]. It was not deleted.

Wilmot also requested him along with John Caldwell and John Beverly Robinson "to draw the proposed bill for adjusting generally the Canada trade with other colonies and with Europe"[32].

The most pressing problem that could be alleviated by a union was the controversy in Lower Canada over financial control. By 1822 it had become paramount; for the government, "the question was above all a question of political expediency, of good administration", for the assembly, "it was a question of principle, of constitutional right"[33].

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31 P.A.C., Series Q, MG 11, Vol. 162, pt. 2, Public Offices and Miscellaneous 1822, Marshall to Wilmot, June 11, 1822, pp. 285-86.

32 P.A.C., Upper Canada Sundries, Vol. 56, Robinson to Hillier, April 9, 1822.

33 D.G. Creighton, "The Struggle for Financial Control in Lower Canada 1818-1831", C.H.R., Vol. XII, No. 2, June, 1931, p. 139.

The major claims of the assembly with regard to the financial problem were:

> In the first place, the assembly declared that it would make no appropriation until the whole of the revenue and expenditure of the colony was placed under its control. Its second contention was that supplies should be voted, not, as the executive required, for the life of the king or for a period of ten years but annually only. And, in the third place, the assembly declared that supply should be voted, not in a lump sum to be expended at the discretion of the government, but in detail by chapters or items[34].

The state of finance in Lower Canada and the threatened penury of the executive government of that province loomed large in the consideration of Wilmot in contemplating a united legislature. He had the verbatim report of the Special Committee of Lower Canada on estimate of the Civil List for 1819[35] which had the difficult task of determing exactly how the money was spent. Of far greater dismay was the accounts of the debts due to the Provincial Government by the Military Chest[36], an account that stated that the Legislation of Lower Canada had at its disposal by 1821 a total of 87,627 pounds, that is, the amount of money spent

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34 Ibid.

35 P.A.C., "Report of the Special Committee on the Estimate of the Civil List for the Year 1819", Wilmot Papers, pp. 300-309.

36 P.A.C., "Debts Due to The Provincial Government by the Military Chest", Wilmot Papers, pp. 310-312.

by the executive, but not appropiated by the House of Assembly. Another report[37] confounded the financial picture by claiming "the expenditure of Lower Canada for the years 1818, 1819, 1820 and 1821 (amounted) to 38, 312 pounds paid by warrant on the Receiver-General which the Legislature (did) not conceive themselves bound to make appropriations for". The conflicting estimates omitted Upper Canada's claim of one-fifth of customs at Quebec, so if the Executive Government of Lower Canada awarded Upper Canada its claim, then the legislature of Lower Canada would add that award to the inappropriated funds. The memorandum closed with the inauspicious observation that "it is perhaps worthy of remark that as the commerce of the Canadas for the last two years (1820 and 1821) has been progressively declining, the revenue arising from the permanent acts will probably fall much short of that of preceding years"[38].

Among those that Wilmot consulted on the financial status was Charles Marshall. Throughout his observations ran the constant theme of strong executive government and subordinate assembly. To him the Assembly's usurped right

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37 P.A.C., "Memorandum Respecting the Supply and Expenditure of Lower Canada for 1821 and Statements of the Revenue Acts Which Will Expire May 1, 1822", Wilmot Papers, pp. 225-7.

38 Ibid., p. 227.

to grant by items meant nothing less than "to dictate to the government what officers it shall employ and to approportion to each what he shall receive for his services". The Executive could never grant that right because it "would at once convert each servant of His Majesty, not excepting the Governor, into a dependent of the Assembly". Worse still, was an imponderable; what would happen to English bureaucrats in such a dependent position when one considered "their (Canadians') strong and perhaps natural jealousy of all persons not Canadians who hold office?"[39] Marshall had left Lower Canada in 1821 because he was suddenly thrust into a subordinate position with less salary by the return of Uniacke. When advising Wilmot he had no position and no certain income and this state of insecurity is reflected in his counsel. Should he ever return to Canada he wanted no such relation with the Assembly.

His emphasis on position and security were again reflected in the condemnation of the Assembly's assertion of an annual civil list to fluctuate with the nature of the

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39 P.A.C., "Observations on the Differences which have arisen between the House of Assembly and the Branches of the Legislature of Lower Canada as to the mode in which the supplies for defraying the expenses of the Civil Government ought to be granted", Wilmot Papers, Marshall to Wilmot, April 13, 1822, p. 210.

provincial economy. Even though his salary was provided for "or nearly so" by permanent acts, this assertion of an annual civil list repulsed him on a matter of principle. It was unjust "towards those (like himself) who have devoted themselves to the service of the government on the faith that they would be supported in a manner becoming their station, and who never contemplated a dependence on the Assembly or on the vicissitudes of trade". Worse than unjust, it was "unstatesmanlike" to say "it is true there are some heads in the estimate under which more is asked than we Canadians think necessary for those branches of public service, but no matter we have not a comparatively flourishing commerce, we can afford to be extravagant this year; but if our trade falls off, you must be cut down, not to the real wants of the Province, but according as our constituents consume more or less rum"[40].

Further fortifying his plea for the thwarting of the extensive and alarming powers claimed by the House of Assembly, he pointed out that the annual civil list was unconstitutional and that this demand by the Assembly was inconsistent with its demand that it be accredited with the same powers as the British House of Commons, for in Britain

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40 Ibid., p. 212.

the civil list was voted for the life of the monarch. The Executive had to hold fast or else the Governor and Legislative Council would be "at the mercy of a triumphant commons" because it must not "be forgotten how certain every concession made to a popular body, which is not perfectly well founded, is to be followed by fresh demands still more unconstitutional". The Crown had to keep parliamentary influence, otherwise, there was no "hope of carrying an unpopular measure, however necessary and constitutional by the common means of legislative debate"[41].

A just remedy for the situation had to be provided by the British parliament because the House of Assembly "is perfectly incompetent to discuss matters of high constitutional moment (in its present state of infancy and inexperience) between the Crown or rather the parent state itself". The situation "called loudly for the exercise of the undoubted right of the Imperial Parliament to legislate for her colony" or soon "the functions of government must either be suspended or funds supplied by Great Britain"[42].

The seemingly impending impasse was, however, a fortunate crisis in Marshall's mind because it coincided

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41 Ibid., p. 215.

42 Ibid., p. 216.

with a set of events that seldom occurred. If handled carefully the Imperial authority being used at that time (April, 1822) to regulate the trade of the colonies and to consider a solution to the claims of Upper Canada on Lower Canada could simply be extended to a solution for the political situation in Lower Canada and all the acts would appear as general Imperial policy.

These were the views of the man that Wilmot assigned the task of drawing up a Union Bill. Above all, the result that Marshall desired was a political climate in which English bureaucrats could be assured of position, status and security. The political aspects of the Bill were consistent with his aspiration.

The essence of the final Union Bill, although not necessarily the final content, was in two memoranda he submitted to Wilmot. It was a well calculated risk to ensure at least eventual English equality and later a majority in the assembly. The number of representatives for either province could not exceed sixty and no act for increasing that number could be passed unless by the concurrence of two-thirds of the members present. The qualification of members as respects property was to be 500 pounds sterling in real estate in the province for which he was chosen, thus eliminating many in both Upper Canada and Lower Canada.

Two members of the Executive Council were to be admitted into the Assembly to propose and discuss measures, but not to vote. This innovation would have not only enabled some confidential servants of the Crown to have a position, but also would eliminate the necessity of the Assembly having to approach the head of government through an official Address or Petition.

The proscription of the French language in twenty years was considered a progressive move because it could only be regretted that in a British colony composed of British Subjects, the English language should not always have been used in their public acts and written proceedings as it would have induced a study of the English language which would have tended materially to diffuse among the people the knowledge of the British Constitution. The generous liberator was ready to bestow another boon upon the Canadians. Since the records and laws would be in English, the debates should be also, so that all parliamentarians would have to know only one language. The only doubt Marshall had about the whole linguistic change was whether fifteen years was not too long a time to suffer so embarrassing a state of things.

All important things were political. Laws affecting the Romish Religion were secure; the Canadians had no cause for alarm. In fact, the Canadians were to be further

liberated by a change in the system of tenure which would lead in time to the gradual abolition of the inconvenient system of feudal tenure. Marshall, in his sincerity to establish what he thought to be a better way of life, seemed not to realize that his bill was a Trojan Horse to Canadian society[43].

James Monk was seventy-seven in 1822, when he was advising Wilmot regarding certain facets of the proposed Union Bill. No doubt he knew a great deal about Lower Canada, for he had been Chief Justice for the Court of King's Bench for the District of Montreal since 1794, that is, for the past twenty-eight years. Monk, however, had wearied of his official position by 1820, when he had petitioned Lord Bathurst "for permission to retire from judicial duties with remuneration and marks of royal favour"[44]. His petition had met with favour, for Henry Goulbourn, the Colonial Under Secretary in 1820, was in-

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43 P.A.C., "Details of the Proposed Union" and "Abstract of a Bill to make more effectual provision for the government of the Provinces of Lower and Upper Canada, to regulate the trade thereof and for other purposes relating thereto", Wilmot Papers, pp. 63-68 and pp. 93-106 respectively.

44 P.A.C., Series Q, MG 24, Vol. 162, pt. 2, "List of Papers on Mr. Chief Justice Monk's Case", Public Offices and Miscellaneous for Lower Canada 1822, p. 295.

structed by the Colonial Secretary to inform Monk that "Bathurst would instruct Dalhousie (Governor Dalhousie) to bring Monk's case to the consideration of the Legislature of Lower Canada"[45].

Governor Dalhousie complied with the instructions of Bathurst and in his message to the Legislature of Lower Canada on February 28, 1821, Dalhousie requested the Legislature to consider the past services rendered by James Monk, Chief Justice of the Court of King's Bench for the District of Montreal, who was then in England on leave of absence. Since the Legislature had been tardy in granting Monk a pension, the Chief Justice remained in England to lobby his position, for in July, 1822, he requested a "prolonged leave of absence"[46]. Thus, James Monk was in England when the proposed union was being prepared; in England, however, to further his own interests. Any other services would be accidental.

It was small wonder that the Legislature of Lower Canada had frowned upon his request for a pension, for his relations with the Legislative Assembly were strained. The Assembly's most poignant memory of Monk was likely his

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45 Ibid., A reference to a letter from Goulbourn to Monk, October 26, 1820.

46 Ibid., Monk to Bathurst, July 26, 1822, p. 302.

impeachment by that political body in 1814[47] and the resulting dismissal of the charge by the Crown.

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47 Journals of the House of Assembly of Lower Canada 1814, "Heads of Impeachment of James Monk, Esquire, Chief Justice of His Majesty's Court of King's Bench for the District of Montreal, in the Province of Lower Canada, by the Commons of Lower Canada, in the present Provincial Parliament assembled, in their own name, and in the name of all the Commons of the said Province". The following is a summary of the charges. The Assembly charged that Monk had traitorously and wickedly endeavoured to subvert the Constitution and the Established Government of Lower Canada; had disregarded the authority of the Legislature of the province, and in the Courts of Justice wherein he had presided and had usurped powers and authority which belonged to the Legislature alone; that on January 19, 1809, he had consented, concurred in, approved, and caused to be made and published various regulations under the name of "Rules and Orders of Practice whereby James Monk endeavoured and laboured to change, by the Court of Appeals, the laws of Lower Canada. In addition he had published, in February 1811, more regulations that imposed illegal burdens and restraints upon His Majesty's subjects; that as President of the Court of Appeals had set aside laws of the Province and substituted his will and pleasure to the manifest injury, oppression and subversion of His Majesty's subjects' important political and civil rights; and that he ascribed to the Court of King's Bench the power of altering, changing and modifying the laws of Lower Canada. The last two charges were that Monk had denied Writs of Habeas Corpus to persons legally entitled to them and that he had given legal advice in Criminal Prosecutions in which he had later acted as judge. In summarizing the Assembly concluded that Monk had tried to alienate the hearts of His Majesty's subjects from the King; had subverted the Constitution and laws of the Province; had introduced arbitrary and tyrannical government, and had broken his oath to the government of Lower Canada and to the King. Appendix (G).

Since John Beverly Robinson's role in the bill was principally economic, as was that of John Caldwell, the Receiver-General of Lower Canada, and as the role of Charles Marshall, Solicitor-General of Lower Canada was mainly political, having been ascribed by Wilmot, the credit for drawing up the bill, the contribution of James Monk has been somewhat overshadowed. Actually, Monk submitted excellent summaries of the purposes of the bill, general accounts of the political, economic and social history of Lower Canada, general observations on the bill and was especially informative on the matter of tenure.

The Chief Justice of the Court of King's Bench of the District of Montreal prepared a summary of Marshall's abstract of the Canada Bill. There were eleven principal objects of the proposed bill, namely, "to unite the Legislatures of Lower and Upper Canada; to create new Counties for newly settled townships and to limit the number of representatives in the Assembly; (to establish) a qualification of 500 pounds in real estate value from a person to be elected a representative; to grant to the Executive Government a participation in the debates and proceedings by (having) two members of each Province as members of the Assembly; (to enlarge) the time for continuance of the Legislature to five years in place of four; (to have) the Proceedings of the Legislature . . . in the English Language

and after ten years the debates therein to be held in the same language; (to restrain) the Privileges in the Council and Assembly from issuing warrants to imprison until such privileges be declared by an Act of the Legislature; (to provide that) the tithes and the collation to Roman Catholic curacies, to be for the future made under his Majesty's supremacy and approbation, (other rights and privileges of the Roman Catholic Church would remain unchanged); (to establish) a change of tenure from Feudal to Common soccage Tenure, and a right, to be in the Crown, to commute with its censitaire for a release of such base tenures at present held en roture; (to provide) provisionary clauses to adjust the payment of drawbacks which the Lower may owe to the Upper Province; (and) to provide for His Majesty's application of the colonial revenue, until the 1, February 1825 to the support of the administration of Justice and the Civil Government, unless the Provincial Legislature shall sooner provide therefor"[48].

Something had to be done with the Canadas for "great difficulties, anarchy, and confusion continued during

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48 P.A.C., "Abstract Pointing to the Principal Objects of the Present Bill", Wilmot Papers, pp. 61-62. Authorship of Monk's articles were determined by comparing them with a letter bearing his signature in C.O. 42, Vol. 193, Reel No. B-149, Monk to Wilmot, July 2, 1822, pp. 96-97.

the first period of ten years (1763-1773) by an Administration under the governor and a limited restricted council". Fortunately, "these difficulties were intended to be removed by the First Quebec Act (1774)". Still, however, there were problems, for "under this general enactment the great remedial writ of Habeas Corpus . . . was not considered as being introduced as part of the Criminal Law. The want of it occasioned much clamour and complaint". In fact, "this administration under the second system by the Quebec Act was found to be ineffectual". The main reasons were that the Executive Colonial Government had sole charge of legislation without the power of levying any taxes to support the Colonial Civil Government. Eighteen years were enough, for then (in 1791) occurred "the third system under the Canada Act, granting complete powers to pass all laws adequate to whole efficiency of legislation". The resulting abuse of power, according to Monk, by the French-Canadian dominated House of Assembly was so obnoxious and known to all that he thought "it would be presumption to obtrude officious remarks".

At other times Monk vented his rage to Wilmot about the situation in the Lower Canadian Assembly, for there "the Canadians . . . elected from among themselves persons who did not understand or speak the English language, the Principles of the English Constitution, nor the laws of

England". Worse than that, however, "the debates were used and conducted wholly in the French language", although "the Legislative proceedings were carried on in both languages". The most intolerant aspect was the ignorance of the Assembly and the result of this situation was that in the Assembly "there might be five out of forty members who could read and comprehend the English language, but the government majority, three-fourths of the Assembly, must rely on the few for the explanation of what should have been in their power by reading in order (that they might) be useful and not be deceived by party prejudice"[49]. Blinded by his own bias, he blamed the Canadians for all the problems because they would not assume the English ways and means. The turmoil and chaos that he had observed had a source; "so far, ignorance may form an excuse to many persons for the various confusions and anarchy that have happened in that disturbed and conflicting body, the Assembly"[50].

Supporting the theory of circumstantial expediency or that of impermanence, Monk noted that "the Canada Act (1791) could only be viewed as an essay to form the best government that the time and circumstances required for those

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49 P.A.C., "Notices upon a Bill Projected to Unite the Provincial Legislatures of Lower and Upper Canada", Wilmot Papers, p. 169.

50 Ibid.

colonies - and so it was argued in Parliament when the Act was passed"[51]. By 1822 circumstances demanded that some of the defects of 1791 be remedied; that the legislative process be improved, and that constitutional colonial government be strengthened.

The indispensable requisite for creating and preserving the tranquility of His Majesty's Colonial government was an immediate imposed amendment to the Colonial Constitution, an amendment that would doubtless be such as may sufficiently guard against obstruction, promote the national interest over its dependent colony and secure the full exercise of that protective prerogative which had been so frequently assailled and at times paralysed. Monk certainly helped to contribute to the delusion in the Bill:

> The Provisions of the present Bill, it is conceived, will gradually anglify those two colonies and lead to a clear view of their real united interest, in their dependencies upon a benevolent, fostering parent; the protection of a benign sovereign and of a Great Commercial Nation[52].

In a United Canada, then, the tranquility of His Majesty's colonial government would be preserved; present

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51 Ibid., p. 170.

52 P.A.C., "General Remarks on the Government", Wilmot Papers, p. 125.

obstructions would be obviated; Britain's hold on the colony would be strengthened and also the executive power would possess its proper rule. Defence as well as the government would profit from Union because protection was certain only under the persuasion that one common interest must pervade the whole body of the two Provinces. Considering the impasse between Lower and Upper Canada regarding revenue rights, Union would be a preventive measure in that further division between the two provinces would be avoided.

Monk noted the opposite effect in the present system since "all efforts to conciliation have failed and the report made by the Commissioners of the Assembly of Lower Canada to treat with those of Upper Canada evince not only the differences and the difficulties, but hold out their expected recurrence destructive to the interests of the two Provinces". Worse than the potentiality of recurring fiscal problems was that "the legislating power possessed by the Lower Province places the Upper in a state of dependence which results from a conclusive control over the Port of Quebec assumed by the Legislature of Lower Canada"[53].

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53 P.A.C., "Notices Upon a Bill projected to Unite the Provincial Legislature of Lower and Upper Canada", Wilmot Papers, pp. 170-171.

As a preventive and liberating measure, Union imposed by Parliament would cease the mutual provincial injury, free Quebec, provide for maintenance of civil government, and settle the revenue question until a "combined Legislature majority of two-thirds of its members agree upon a just principle for their (Upper Canada) future ease and tranquility". Monk was willing to gamble on the future in order to obtain dominant majority rule. In the United Legislature, representation was best to be by population and although the Canadians or New Subjects might be initially numerically superior Monk "observed that the climate, the lands, habits, language, laws and local institutions of the Upper Province attract the stream of nearly all the emigration from Europe to Canada into the Upper Province, which in a short time must give weight to that population, not at present fully comprehended"[54].

In his consideration on the various sections of the Union Bill, it was apparent that Monk regretted that the French Canadians had been so ungrateful especially when one realized "the liberality with which the Canadians were admitted to a participation in the Legislature and offices in government (no such test oaths as were required in all other colonies)". Surely in return "it may be asked: has it not

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54 Ibid., pp. 171-172.

been incumbent upon all new subjects to become acquainted with the national language (English); that in which the commercial interest, social interest, a greater part of the Laws exist, and all provincial statutes are promulgated?" English was a necessary qualification for a competent legislator; thus, "those who are intended to participate in such situations may do so if qualified; if not, they can have no claim to them"[55].

Not only had the French Canadians refused to reciprocate benevolences offered, they had actually brought the necessity of Imperial interference upon themselves:

> The violent and hostile exertion of the Assembly of Lower Canada against a granting of pecuniary aid so repeatedly promised have . . . and must impel the Imperial Parliament to measures that will secure the dependence of the Colonial possession and according to their means relieve the borthens of the Parent State. If principles are to be granted that can transfer rights of the Crown, the prerogative or executive government into the hands of the Legislative branches of power where "The People" are to form the sovereign directions of the Royal government, a change may be expected to follow that it is not more easy in perceiving to deplore than imperative to prevent[56].

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55 P.A.C., "Notices Upon Various Sections of the Bill", Wilmot Papers, pp. 173-174.

56 Ibid., p. 179.

Politically, Monk was positive that the usurped rights of the Assembly of Lower Canada had to be thwarted before the "reasoning from analogy (between the Assembly of Lower Canada and the British Parliament) extend to the exercise of power that ought not to be exposed by warped constructions for factitious purposes"[57].

Similarly, it was imperative that the control of the Roman Catholic clergy rest ultimately in the Crown. Somehow that Church had assumed the right that it was "politic or intended that the whole body of curates - Parish priests - of Lower Canada should be appointed, inducted, removed, or suspended of the sole will of the Roman Catholic bishop without consultation or any participation by the Crown". That idea had to be countered and the King's supremacy restored, for "the instructions that were framed and accompanied the Quebec Act 14 Geo 3 never intended to transfer or rest such a power; and its effect expressly attempted to be prevented"[58].

Monk's most worthwhile counsel to Wilmot concerned the details in the change of land tenure from feudal to freehold or common soccage. As was his view of the Crown in

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57 P.A.C., "Notes on the Heads of a Bill to Unite the Legislatures of Lower and Upper Canada", Wilmot Papers, p. 181.

58 Ibid., p. 182.

the colonial politics and Roman Catholic clergy, so too it was regarding conversion for he urged that "the King should retain the complete equitable and legal right to declare the terms upon which he would grant the conversion"[59]. In a brief to Wilmot he outlined how the King of France as seignior souvraine settled Canada by Fief Estates which were further parcelled out as concessions en roture and these latter undergrants began a base tenure of cens et rentes to render services, duties and small rents. Fief law stated that the seignior on the Fief Estates could not sell his Fief without the permission of the sovereign Lord, the King, his grantor and upon change suffered, or receiving a new Fief Lord, he paid to the King a fine or Quint of one-fifth of the amount of the sale.

There followed in the brief an estimate of the size of a fief; the way in which roture Estates were parcelled out; the position of the tenant en roture (the censitaire); the occasion and amount of Lods et ventes; an account of how the system functioned on Royal estates in Canada, of how royal revenue called the Casual and Territorial revenue was derived from these lands arose from Quints and Lods et Vente. Included was an account of how the King assumed the responsibility for settlement of the colony and lastly a word

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59 P.A.C., Wilmot Papers, p. 136.

regarding how the general Fief Laws of France, originally introduced, possessed deviation from France.

The intricacies involved in the change of tenure were never mastered by Wilmot for Monk was still addressing him on May 31, 1822 when the Bill was already under study by the Colonial Office's legal advisers. In fact, even after the first reading in the House of Commons, Monk volunteered certain deletions and suggestions regarding the ambiguity of the King's total right to declare the term of conversion. Monk suggested "a better consideration (than) that (which) by a hasty arrangement of the clause was never intended to be embodied in a Bill or replete with wisdom, policy and justice"[60].

Chief Justice James Monk of the Court of King's Bench for the District of Montreal and Solicitor General Charles Marshall, however, were not the only political appointees from Lower Canada who were in England in 1822. The third, Receiver General John Caldwell, was born in Quebec City in 1775; admitted to the provincial bar of Lower Canada in 1798 and sat as the member for Dorchester in the Legislative Assembly of the province from 1800 to 1809, at which time he succeeded his father as Receiver-General of Lower Canada. He was the only official govern-

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60 Ibid., Monk to Wilmot, July 2, 1822, p. 137.

ment representative of Lower Canada in London in 1822, for Monk was on leave of absence seeking a retirement pension and Marshall, also on leave of absence, was seeking a new posting. Wilmot called upon the Receiver-General to submit briefs on the trade problem, the civil list question and also, quite probably on the matter of the Assembly's claim on unappropriated funds.

Since he was on the Civil List of Lower Canada himself, he was in a rather delicate situation when Wilmot requested a report on the problem from him. The Receiver-General put forth a plea of personal impartiality in the situation maintaining that he had endeavoured "to divest himself as much as possible from party feelings in which he (was) not conscious of having much indulged at any period of his life, having endeavoured to confine his public conduct to a steady but unostentatious support of His Majesty's government without allowing himself to consider those who differed from him in Political Measures as Persons mischievously disposed or irrevocably hostile to the government of his country"[61]. Such detachment could be comprehended possibly in a bureaucrat in England, but hardly in one who

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61 P.A.C., "Observations on the Provisions for the Civil List in Canada", Wilmot Papers, Caldwell to Wilmot, April 12, 1822, p. 203.

had lived his entire forty-seven years within French-Canadian society and who had been associated with English colonial officialdom since he was nine, for his father was temporary Receiver-General from 1784 to 1794 and had held that position permanently from 1794 to 1810.

Monk had exploded his frustrations to Wilmot by exhorting a last stand to establish English superiority; whereas, Caldwell reacted exactly opposite to his frustrations. He withdrew into a closed little world in which the conduct of the French Canadian caused lament, but "cannot excite surprise". Everything had an explanation. The incongruity of the Canadians, whose political education was "deficient", demanding a Constitution "formed somewhat on the model of the British" to operate for "a people speaking a foreign language and deeply moulded with foreign prejudices" was nothing more "than might be expected in the first establishment of a representative form of government and by no means to be charged on the people or their representatives as arising from disloyalty or disaffection to His Majesty's paternal government"[62].

No mention was made of union; in fact, his portrayal of the Canadians negated the case for a strong executive to control the Assembly. To him the Canadians were chiefly

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62 Ibid., p. 204.

composed of the "most mild and amiable manners, united to loyalty of feeling and respect to the constituted authorities". Their only weakness was that they were easily led by a few patriotes, but their weakness was reasoned away by the fact that most of the population's "extreme sociability of disposition, added to the quietness with which they receive any new impression and their general event of information"[63] readily made them the prey of a few upstarts. Caldwell also pardoned the actions of the upstarts or patriotes, in their effort to control completely the Assembly because they considered that the privileges they possessed by the Constitution of 1791 depended upon their power in the Assembly. This was a remarkable insight; an insight, however, that Wilmot would find difficult to accept, but which made Caldwell one of the two in England at the time who realized the aims of the Canadians.

Having rationalized the Canadians' demand for a constitution, as well as their docility and the patriotes' actions, the Receiver-General of Lower Canada did the same for their inability to understand high emoulments for appointed bureaucrats. Since the great majority of the Assembly "are composed of men of frugal habits, simple manners and who from being, for the most part, but little

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63 Ibid.

educated themselves, they cannot be supposed to be able to appreciate that remuneration for eminent services which is at once an exciting cause and the merited reward of superior requirements"[64]. Caldwell's simplicity in his analysis of the Canadians was only surpassed by that simplicity which he attributed to them. He did not seem to grasp the fact that the reason why they were against high remuneration for positions like his was that they never received them.

The most devastating assertion of any unionist was Caldwell's candid observation that it was the English in Lower Canada who were responsible for the aggressive tactics of the Canadians in the Assembly. The English had wanted the Assembly and it was the French who learned how to use it so well that the English influence in the assembly was completely eroded. Sufficient numbers of French-Canadian parliamentarians preserved the privileges gained in 1774 and 1791 through the medium of British Parliamentary procedure and matured to the realization of the power of linking grievances with the control of finances. A British institution, namely, representative government, had thwarted the English in Lower Canada and benefited the Canadians.

Although Caldwell understood the Canadian position, he did not understand realistically his own. His general

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64 Ibid.

proposition "that the government (executive) do not possess sufficient influences to return a single member from any town or country in the Province and that generally it is found quite sufficient to insure the loss of the election of any candidate (if) he is considered a dependent in the government", was certainly impartial or maybe it was quiet resignation to an unalterable fact. Similarly he knew his position if the Assembly vetoed money bills, for in such a situation the hardship "will always be more severely felt by the officers and immediate dependents of the Crown, than by any persons for whom the Assembly feel any concern"[65]. As an officer of the Crown, he would have to include himself among the persona non grata in the consideration by the Assembly.

The continually fluctuating revenue and the threat of vetoed money bills were the major areas wherein Lower Canada would encounter confusion and distress. Somehow, but he knew not how, England ought to legislate the difficulties out of existence by creating a political structure in which the Legislature and the Executive would have equal dispensing of money power thereby "ensuring their mutual dependence on and consequent agreement with

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65 Ibid.

each other"[66]. Caldwell's political solutions were perhaps clouded by the disarray of the finances in his department in Lower Canada.

Wilmot's fourth consultant who was connected with Lower Canada in some way was another persona non grata in the eyes of the Canadians, and also, at one time, in the eyes of the Executive Government of Lower Canada. In a letter to Wilmot in April 1822, John Beverly Robinson referred to a discussion about the proposed union at which he, Wilmot, Edward Ellice and William Osgoode were present. William Osgoode had not been in the Canadas for over twenty years; yet he was present at the consultation. His presence at the Colonial Office might be understood if he had left Lower Canada under favourable circumstances; whereas, in fact, the Governor had demanded that he be recalled to England for misdemeanours committed in Lower Canada.

Born in England in 1754, he later trained for law and was appointed the first Chief Justice of Upper Canada in 1792 as well as speaker of the Legislative Council. Two years later he was appointed Chief Justice of Lower Canada, the position he held until 1801 when he was pensioned and returned to England.

Besides the position of Chief Justice of Lower

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66 Ibid., p. 207.

Canada, he was also appointed to the Legislative Council and named president of a committee of the Executive for the management of Crown lands. As president he became involved in land speculation which caused a prolonged controversy from 1797 to 1800 between him and Lieutenant-Governor Prescott. The members of the committee had conceded large expanses of land to each other under fictious or forged names. When he was challenged by Prescott in 1798, Osgoode petitioned the Colonial Secretary for Prescott's recall, an action that erupted in a complete break between Prescott and Osgoode. When he returned to England, he maintained his position as a member of the Legislative Council of Lower Canada. This connection, which was dormant for over twenty years, established his link with Lower Canada.

Marshall, Monk, Caldwell and Osgoode could each establish a link with Lower Canada; whereas, one of the representatives from Upper Canada in the discussion on the Union Bill was Attorney General John Beverly Robinson who had come to England in March 1822 to discuss economics and suddenly found himself thrust into the role of colonial political adviser. This Upper Canadian opportunist met the challenge by dissenting politely and, at the same time, assuring the interests of his province. No matter "whatever course His Majesty's government may determine to adopt", he

would be "equally ready to aid it by any service . . . which can be useful"[67].

The Upper Canadian Attorney-General was very cautious in his comments on the proposed union, for he had to serve the interests of those whom he represented and yet offer views on a matter "that was a favourite subject of the Ministry and I may say it was determined upon before I came here (March 23, 1822)"[68]. Having had no instructions to discuss a legislative union as a solution to the economic ills of Upper Canada, he attempted to divorce his government from any connection with the considerations he put forth so that Upper Canada would not hold him responsible for any commitments. His statements were those that occurred only to him, not to his government; he had taken the "liberty to state . . . views of the question as my acquaintances with the situation in Upper Canada and my opinion of the interests and wishes of His Majesty's subjects there lead me to entertain"[69].

He did not oppose union <u>per se</u>; he weighed "the probable consequences of an union of the legislatures"

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67 P.A.C., <u>Wilmot Papers</u>, Robinson to Wilmot, April 23, 1822, p. 98.

68 P.A.C., <u>Upper Canada Sundries</u>, Vol. 56, Robinson to Hillier, April 22, 1822, p. 28576.

and let Wilmot draw conclusions. Such a view permitted him to report on the proposal to Wilmot without losing the favour of the Colonial Office and at the same time allowed him room to manoeuvre in the event that the Upper Canada government and people did want union.

To support his position, Robinson claimed that the dichotomy that precipitated the division in 1791 was undiminished. In other words, the French had not yet seen the superiority of English law, language and society; in fact, the division between the English and French was greater in 1822 than 1791. Moreover, separate provincial governments were much better because emigration had extended the area of Upper Canada and thus the territory of the Canadas was too extensive for one government. He was not one to stand in the way of union if it would beneficially affect the welfare and convenience of the two provinces, provided, however, "if it be clear that such union be necessary to increase the value of these colonies to the Mother Country, or to provide in the most effectual manner for their own security and welfare"[70].

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70 P.A.C, "Considerations upon the expediency of giving a United Legislature to the two provinces of Canada by an act to be passed during the present parliament", Wilmot Papers, Monk to Wilmot, April 23, 1822, p. 100.

The only justification for union was the possible reality that Britain was powerless to correct and regulate the financial problems between Upper and Lower Canada. That lack of power "would be of itself a sufficient reason, for while these points are unsettled the governments and legislatures of both provinces are subject to be involved in irritating discussions which may tend to much evil, and what is more immediately pressing (is the fact that) the Province of Upper Canada is absolutely unable, for want of funds which remain backed up in the treasury of the Lower Province to pay her auditors or to support the current expenses of her government". Britain, however, did not lack the power to remedy the financial impasse, so he saw no need of an union. Having reasonably dismissed the need for union, he then supported it. Always conscious of the interests of Upper Canada he noted that if the Imperial Parliament encountered problems in executing its legal right to intervene in a financial situation, then "an union was the only other method of attaining a necessary object"[71].

Robinson's rhetorical questions were posed so that each could be answered in the negative. Considering the beneficial effect of an union in remedying the refusal of the Legislature of Lower Canada to provide for the expenses of

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71 Ibid., pp. 101-102.

administering justice and supporting the civil government; in remedying the embarrassment over the fluid state of the civil list, and in remedying anti-commercial attitudes of the Canadians, he concluded that it "was impossible to say decidedly how far . . . they might be expected to be removed by a union"[72].

A concern of the Attorney General was the possibility of a French-Canadian majority in a united Legislature, since "the number of representatives in Upper Canada is at present less in the Lower Province and would no doubt continue so for many years". Even if Upper Canada did obtain an over-ruling influence he thought "it doubtful whether . . . they would be disposed to exert it in changing the internal municipal policy of the other province contrary to the wishes of nine-tenths of the inhabitants"[73].

Of far greater importance were the probable consequences of union on the financial situation. In any question in which the interests of both provinces would be involved, such for instance, as the proportion of revenue to be expected in Upper Canada "there would be little chance

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72 Ibid., p. 104.

73 Ibid., pp. 105-106.

of a fair decision for some time to come". There would be far greater friction and problems in a united Legislature because the people of Lower Canada "would feel extreme annoyance at the Union, looking upon it as a scheme to give the English population an undue ascendancy, and (the Canadians) would be for some time little disposed to unite cordially with us forgetting all distinctions"[74].

John Caldwell had ascribed the Lower Canadian Assembly's actions to its attempt to preserve Canadian rights and privileges; whereas Robinson, far from prescribing the trouble over the civil list and revenue to a French influence over the English, prescribed it "to that desire that all popular Assemblies exhibit to assert and exercise to the utmost the share of power which they think the constitution gives them, and even to extend it, a disposition from which more inconvenience must be expected, the more purely democratical such a body may be and which I think the descendants of the English, Irish and Scotch will be found as likely to persevere in as the descendants of the Frenchman"[75]. Attorney-General John Beverly Robinson preferred the status quo in 1822 unless something else could

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74 Ibid., p. 109.

75 Ibid., p. 111.

be proven more beneficial. Union could not. As far as he was concerned, "at present things are proceeding pleasantly and prosperously in Upper Canada. In Lower Canada they are not, but I do not think an Union would remove in the least the difficulties existing there and it might have the bad effect of involving the one province in the troubles of the other"[76]. At last Wilmot and the other unionists encountered a dissenting view.

The major criticism of the proposed Union that reached Wilmot before the bill was introduced was incisive, but its authorship has been contested[77]. In 1822, however, it was believed to be from Reverend Doctor Strachan, the rector of York, Upper Canada and appointed member of the

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76 Ibid., p. 106.

77 P.A.C., "Remarks on the Union of the Canadas", Wilmot Papers, pp. 82-91. The following notation was at the end of article: "Remarks on the Union of the Canadas by Dr. Strachan sent last spring before the Canada Act was passed". This criticism of the Union was also found in C.O. 42, Vol. 193, 1822, Reel No. B-149, pp. 89-94, Public Archives of Canada. The microfilmed copy attributes authorship to Strachan. Douglas Brymer attributed the document to Strachan. See P.A.C., Report 1897, p. XX. William Ormsby disagreed. See William Ormsby, op. cit., p. 284. Ormsby claimed the document was not in Strachan's hand and that it made no mention of the position of the Church of England under the Union. He attributed the document to Robinson. A copy in Strachan's hand may be found in P.A.C., Strachan Papers, Reel No. M-539, April 18, 1828. It was prefaced: ". . . the following paper was . . . transmitted to the Colonial Department in April, 1822."

Executive Council and Legislative Council of Upper Canada. Strachan was also a stockholder of the Bank of Upper Canada and among the directors of that financial institution elected in June, 1822.

The document dealt a scathing denunciation to the proposed junction of the two provinces. The technique used in the presentation of the document considered the problem from two vantage points, namely, a criterion of achievement of the aims of the constitution of 1791 and a criterion of consequence. The author thought that "in order to perceive the effect of their remedy (union) it becomes necessary to consider the causes which at first produced the separation - are they removed or do they continue in full force?"[78] That which would credit the document to Robinson was the use of rhetorical style and also a strong Upper Canadian viewpoint; that which would not attribute it to Robinson was the document's vehement and alarming tone.

The author claimed that Pitt's ultimate plan of 1791 for fusion of the French and English had failed completely, in fact, the feelings and characters of the French of Lower Canada were "entirely foreign and often contrary to those of Britain and the results have been entirely opposite

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78 P.A.C., "Remarks on the Union of the Canadas", Wilmot Papers, p. 86.

to what would have happened in a colony of English"[79]. Thus, the reasons for dividing the province in 1791 still existed in full force in 1822.

Just as these reasons existed in Lower Canada, so too, did they exist in Upper Canada. There, British feeling had been cherished and the benefits of the constitution have been felt and acknowledged. On the part of the English and American settlers, the reason which produced the separation still remained. It was rather ironical to have Americans in Upper Canada supporting a British Act of Parliament. More important, in the eyes of the writer, the Americans who were enemies in 1812-1814 and rebels in 1776 were viewed in 1822 as more appreciative of British institutions than the Canadians.

In the comments resulting from the criterion of consequence of a Union, the document went one step beyond the diagnosis of Robinson by suggesting that both provinces would be not only discontented but also "perhaps rebellious". Unlike Robinson, this author thought "the inhabitants of Upper Canada will feel (Union) as a punishment. Their property will diminish in value and the settlement will languish, for the presence of local government gives them life". Similar to Robinson, he feared an united government

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79 Ibid.

controlled by a majority of French votes. Where Robinson emphasized the fate of Upper Canadian finances in a discordant united assembly, this author was more concerned about society and religion, for he noted that "Everything would be French and Catholic and everything English and Protestant (would be) hated"[80].

Politically, there was absolutely no possible way by which the English element could control the government through a democratic majority. If both provinces were to have an equal representation of fifty members each, the division in Upper Canada would be "for the government, fifty" and "against the government, nineteen"; whereas, in Lower Canada the voting pattern would be "in favour of the government, ten" and "usually against the government, forty". Thus in a united legislature there would be forty-one in favour of the government and fifty-nine against the government. A majority of eighteen against the government in a united legislature was "the most favourable result that can be anticipated". Representation by population, of course, was out of the question, for according to the author "the number of inhabitants in Lower Canada amounts to 350,000 and in Upper Canada to 150,000. Moreover, with such a disparity of population, it was not likely "that the Imperial Parlia-

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80 Ibid., p. 88.

ment would be disposed to give as many representatives to Upper Canada as to Lower Canada"[81]. There was no way the English could escape an undesired minority role in an united assembly; therefore, the author opposed union until about 1850 when both the Canadas would be more English and union more possible.

Upper Canada did not possess a monopoly on the dissenting views, for there was in England a former governor of Lower Canada who, although he concurred in the desirability of Union, hedged his concurrence with cautious admonitions. Lieutenant-General John Sherbrooke, who had served as governor of the Lower Province from 1816-1819, answered Lord Bathurst's question "Whether the Union of Upper and Lower Canada would have a beneficial effect?" in a clear and succinct fashion.

Sherbrooke believed that "an Union would be very desirable". That statement, however, was couched in so many conditions that it likely would remain a desire. The Lieutenant-General had lost contact with the Canadas because one reason for Union was "if these Provinces continue in the same state they were in at the time I relinquished the government". Union, however, was futile unless "it could be

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81 Ibid., pp. 88-89.

established on proper principles, so that the undue influence of the Assembly (of Lower Canada) should be somewhat controlled and the power of the Crown increased". Sherbrooke did not want to limit the power of the Assembly to mitigate the Canadian control of that body; rather he sought that end from an administrative viewpoint in which his main concern was sufficient power for the governor to govern the colony. Union would precipitate worse problems that had existed and admonished Bathurst to prepare for "considerable difficulties . . . before it could be reconciled with the jarring interests of the inhabitants and the variety of wild opinions so generally entertained"[82].

Bathurst considered the type of parliamentarian returned to the House of Assembly from Upper Canada to be a more stable, politically prone and tractable type than his counterpart in Lower Canada; whereas the former governor of Lower Canada cautioned the Colonial Secretary not to rely on the politician of Upper Canada to render Canadian politics more stable because "the vicinity (of Upper Canada) to the United States, the population continually flowing in from thence, the constant communication and intermarriages between families on both sides of the line, the number of Americans who purchase the best of the lands as soon as they are cleared

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82 P.A.C., Wilmot Papers, Sherbrooke to Bathurst, March 14, 1822, p. 186.

and every other description of property in Upper Canada worth having, and . . . the loose demoralizing principles introduced by those people (Americans)"[83] would, in time, wither away the tractable position of the Upper Canadians. In other words, the pure English were being contaminated by Americans whom Sherbrooke believed a far greater threat to English influence in the Canadas than were the Canadians.

Lieutenant-General John Sherbrooke corrected politely a few misconceptions entertained by his former superior regarding the situation in the Canadas. Although it was obvious that the Catholics in Lower Canada thwarted Protestant interests in that Province, one should not think that the Protestant interests were secure in Upper Canada. Rather than being predominantly Anglican or Presbyterian, Upper Canada was actually "Methodists and Sectaries of every description. In fact, there were many with no sense of religion whatever"[84].

If Sherbrooke's idea about French in Lower Canada arrested the attention of Bathurst and his Colonial Under-Secretary, Wilmot, the result was never obvious. Concerned about the strength of British institutions in the Canadas, Sherbrooke asserted that the French in the Lower Province

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83 Ibid.

84 Ibid.

were a far better bulwark against American infiltration into the Canadas than the Upper Canadians because "the Catholics in Lower Canada have a rooted antipathy to the Government of the United States, and have no dread equal to that of one day falling under its Dominion"; whereas, in Upper Canada "a stronger bias prevailed in favour of the American than of the British form of government"[85]. Sherbrooke must have been aghast when he saw what the proposed Union Bill intended for the French in Lower Canada.

The involvement of Bathurst as Colonial Secretary in the plan for Union was obvious, but his exact position regarding the plan was less obvious. Since he neither stopped Wilmot's plans nor prohibited the introduction of the Union Bill into parliament, he at least gave tacit approval of the measure. More apparent participation was evident in his solicitation of Sherbrooke for an opinion on the matter. As Colonial Secretary, he was responsible for all actions in his department, so ultimately the success or failure of the Union Bill would be his.

As Secretary of War as well as of Colonies, Lord Bathurst was willing to encourage emigration where an increase in the population of a colony was advisable in the interests of imperial defence. One example was Upper Canada,

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85 Ibid., p. 187.

where the line of communication between Upper Canada and Lower Canada could be strengthened by more settlement[86].

The security of the Canadas had long been among the concerns of Bathurst. In 1816, for example, he wanted the frontier between Lake Champlain and Montreal to remain untouched for use as a buffer zone. He regretted that British settlers had penetrated the area and had instructed Governor Sherbrooke "to abstain altogether from making hereafter any grant in these districts, and to use every endeavour to induce those who have received grants there and have not yet proceeded to the cultivation of them to accept cleared lands in other districts more distant from the frontier of the United States". So anxious was the Colonial Secretary to have a no-man's land in the region that he further instructed the Governor of Lower Canada not only to "prevent the extension of roads in the direction of those particular districts beyond that division of the Province referred to in the plan of the Surveyor General as being generally

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86 Young, op. cit., p. 43. Bathurst wrote: "I should be strongly for a well regulated emigration from Scotland to Canada, if it can be coupled with a systematic exertion to complete the inland communication between Upper Canada and Lower Canada, on which the defense of Upper Canada depends in the Event of War with the American State".

cultivated", but also "to allow to fall into decay" any roads that had penetrated beyond that division. By so doing, Sherbrooke "would best comply with the views of His Majesty's Government and materially contribute to the future security of the Province"[87]. Thus, if Union would have been beneficial to emigration from Britain and to the defence of the Canadas, Bathurst would have considered it as feasible.

By the end of April 1822, the draft Union Bill had proceeded to the legal department of Lord Bathurst's department and the bill remained with the law officers about a month. Actually, this procedure meant that it was studied by a rising member of the power elite, James Stephen[88], who, in his testimony before the Select Committee on the Civil Government of Canada in 1827, described himself as the "Counsel to the Colonial Department"[89]. It was he,

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87 P.A.C., Series D8, MG30, George Munro Grant Papers, Bathurst to Sherbrooke, July 1, 1816, p. 312.

88 James Stephen, one of the first of the great nineteenth century British civil servants, also acted as an adviser to Wilmot. He found himself so frequently employed that he found it necessary to give up his law practice to enter the office on a permanent basis.

89 Report from the Select Committee on the Civil Government of Canada, p. 225.

who before that same Select Committee, clearly stated his position by requesting "if I may express my opinion as to what alteration should be made (in the government of the Canadas), I should say that the two Canadas ought to be reunited"[90]. His task was not only to determine the constitutionality of all colonial acts despatched to England for royal approval or veto, but also to consider the constitutionality of bills prepared by the Colonial Office regarding colonial legislation to be presented before the House of Commons.

The possibility existed, of course, that Stephen's views differed between 1822 and 1828; if there were any change it was towards a hardening or worsening and towards a degree rather than a kind, for his ideas of 1828 were so strong that a veritable difference in kind in 1822 was improbable. He was a harsh realist whose strength was consistency.

He was fair, for he candidly admitted that although the French system of tenure in Lower Canada was "bothersome . . . inasmuch as the tenant owes dues to the lord", it was obvious in 1822 that it really was not bothersome because "a holder of land (was) exempt from all obligations". Granting this relative freedom of a holder of land, he still

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90 Ibid., p. 247.

could not tolerate the seigneurial system. As a question of general and public good, Stephen could never bring himself "to doubt that all lands in Canada should be holden in free and common soccage, than in fief and roture". This position was typical of Stephen wherein his consistency and logic would illustrate an impartial assessment of a Lower Canadian problem and at the same time he would negate a reasoned conclusion by an attitude typical of a Francophobe. A similar example of this characteristic was his frank admission that the Colonial Legislature (of Lower Canada) was "incomparably better qualified" to decide regarding tenure and transmission of property, "except there be a well-founded distrust of the disposition of the Colonial Legislature to do right", that is, to do right by the Anglo-Canadians. His remedy was simply "to establish a proper legislature and you may safely repeal every Act in the Statute Book respecting the internal concerns of Canada", for if the Assembly were left in its present form, "the French members, . . . would infallibly get rid of English tenure"[91].

To him the legislature had to be changed, for it was in his opinion "that the only reasonable course of proceeding is to create a legislative body in which you can repose

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91 Ibid., p. 243.

confidence; and having done so, to have them to make such laws as they may think necessary"[92]. Realizing that colonial government was best conducted by the colony and not by acts made on the other side of the Atlantic Ocean, he wanted that colonial government to serve English interests, not French.

The annihilation of the French was not, apparently, a definite aim but rather an accident consequent of his main reason for altering the legislative system of Canada, for he feared that the present system of a divided Canada was sowing the seeds of separation between the Canadas and England. Two factors were intolerable to the English colonists in Upper Canada and Lower Canada; firstly, that they lived in the centre of foreign states, namely, the United States and the French Canada, and secondly, that New York City and Quebec City were outposts indicting all commercial intercourse with English Canada except on their own terms. Stephen thought that the situation would force the English in Canada to seek unity with the United States because it was unreasonable to think that the people of English Canada will permanently acquiesce to that exclusion.

In the Eastern Townships, however, the matter of trade was supplemented by the question of English civil

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92 Ibid., p. 246.

rights. The causes of dissent in the area stemmed from the deprivation for the English of certain rights, such as a "law respecting the legal consequences of marriage on the property of the parties". Stephen recommended an union, therefore, "as the only effectual mode of rescuing the Upper Province and Eastern Townships from disadvantages to which I think it is neither just nor safe to subject them"[93].

The executive branch of the Lower Canadian government also had to be rescued from its intolerable position if it could function as a bulwark against French-Canadian aspirations. The Canada Act of 1791 had been inadequate from the beginning in that it had "established a monarchial government without securing any of the means of authority or influence to the monarchial branch of it. The government can neither control by its prerogative or influence by its patronage". This disadvantageous position was aggravated by the lack of ties the French Canadians had for England, for they did not "dread your power" nor did they feel strongly "the abstract duty of loyalty, as distinguished from the sentiment of loyalty". The executive had to be strengthened to counter any revolt, for revolt was not "esteemed as criminal or disgraceful" in the Western Hemisphere. The possibility of revolt had to be considered

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93 Ibid., p. 248.

especially since "the sense of national pride and importance was not in Britain's favour (in Lower Canada)". The English Canadians, as well as the French Canadians, were viewed by Stephen as possible rebels since their political status as "the only dependent portion in the New World" was not enviable[94].

His means of rescuing the English and strengthening the executive was one legislature in which the French and English would have equality or at least some approach to it. Both would be equal in strength as political parties and it would be the government's task to moderate the two parties to assure justice to the constitutional rights of each. England would grant complete power in minor matters to the United Legislature and "would reserve for its own interference only the great and more important questions"[95]. In such a political structure the French and English would "learn to respect each other's power and (would) become comparatively quiet". The rescue and strengthening had to originate from the Imperial Parliament in 1822 and 1828 since "you will never have a voluntary union until there is a majority of English to carry the question of Union"[96].

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94 Ibid.

95 Ibid., p. 249.

96 Ibid., p. 250.

Stephen was a grave threat to the French Canadians because like them he had definite principles on which to base actions. He logically and consistently acknowledged that in such an union would have a tendency to depress the French, but that could not be avoided, for the comparative depression of the French, at no very remote period, was inevitable. They would sink under the weight of the English or Anglo-American influence in those provinces. Coupled with the principle of inevitability was his principle of group dissatisfaction to unsatisfactory legislation. Acknowledging that the French would be dissatisfied with the union, he still dismissed the reality on the basis "that whatever you do, or whatever you decline to do, you must reckon upon a great mass of discontent and uneasiness"[97]. His measure, he proposed, would at least conciliate many. Moved by principles, he was moved to action. Added to his principles of inevitability and group dissatisfaction was the principle of extreme and evident necessity. This last principle was applied to justify the purposeful omission of affording the colonies full time to express views on union. He granted that it was an extreme measure and that such measures could be justified only "by an extreme and evident necessity". He glibly asserted that "if the extreme measure

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97 Ibid., p. 249.

could be made out, I would not hesitate . . . . It is just reduced to that question"[98]. The matter of constitutionality, therefore, could be superseded by the degree of necessity inherent in a situation.

At times Stephen bordered on the extreme as may be seen in his confidence that the English in the united legislature, even if they did not have a majority, would still be dominant, for the debates would be in English and the proceedings would be according to the English parliamentary rules. Added to these two factors was a powerful, natural and incalcuable quality: "besides there is a peculiar aptitude in the English character for success in this species of controversy". Reinforcing this inate gift he saw the English greatly superior because he observed that they "will always form the commercial part of society, and having the superiority of wealth and probably of intelligence, they will gradually obtain a superiority in all other respects"[99].

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98 Ibid., p. 250.

99 Ibid., pp. 250-51.

Of the nine English advisers that Wilmot had, four opposed Union and five supported it. Marshall, who prepared the Union Bill of 1822 urged Imperial intervention to provide a strong Executive. On the other hand, Caldwell claimed that the English in Lower Canada were responsible for the aggressive tactics of the Canadians in the Assembly.

Monk urged Union as a preventive measure as well as to strengthen the Executive. Robinson, however, opposed Union because Britain had the power to intervene to help Upper Canada's problems.

The possibility that the English might be a minority in a united legislature was Strachan's main reason for opposing Union; whereas, Stephen, a unionist, asserted that the special English ability to govern would succeed.

Ellice admitted he suggested Union to the ministry. Sherbrooke opposed Union because it would bring worse problems. Bathurst consented to the bill because as Colonial Secretary he could have stopped it.

CHAPTER III

THE CANADA BILL OF 1822 IN THE HOUSE OF COMMONS

To possess colonies or not to possess colonies and if possessing them how to possess them were flourishing political questions in Britain when the Canada Government and Trade Bill of 1822 commenced its journey through the House of Commons. The Conservative government of Prime Minister Lord Liverpool had made its position clear on the colonial question early in 1822 in the annual state of the nation report. Decrying the prevalent practice "of popular utters to undervalue the possession of Canada"[1], the report claimed three main uses of Canada to the British Empire, namely, that Canada constituted a point of contact with the United States; that it administered to the maintenance of the British Navy, by the employment of a large amount of tonnage, and by the formation of seamen in long and rough voyages; and that Canada had economic importance because it consumed a very considerable portion of British manufacturers. These political, military and economic uses of a colony illustrated the government's policy that colonies

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1 The State of the Nation (at the commencement of the Year 1822 considered under the Four Departments of the Finance - Foreign Relations - Home Department - Colonies and Board of Trade) 2nd ed., London, 1822, Public Archives of Canada, Pamphlet No. 1-1125, p. 166.

existed for the interests of the mother country and not for the interests of colonials.

Preservation of the British empire in North America and maintenance of industrial production in Britain constituted the reasons for retaining Canada. Since a war with the United States was quite possible, according to the report, a large naval force could be promptly sent from Canada and used in the American seas. In the event of war with the northern powers of Europe, Canada assurred a supply of timber for ships. With the rising industrial capacity of England, Canada represented a good market as well as an opportunity to employ many British vessels in the Canadian trade. Such views were considered political prudence based on the policy of successive administrations to regard the possession of Canada as a point of primary importance. The report dismissed as ungracious the possibility of any change in this position.

Although it was not until the debate on the Canada Bill of 1822 that Under Secretary of State Wilmot expressed very clearly his affinity with the colonial policy in The State of the Nation report, the preparations that he, Bathurst and Ellice exerted to avoid opposition to all parts of the Canada Bill demonstrated their awareness of views quite different from the government's policy of colonial utility.

On June 20, 1822, Robert John Wilmot, the Under Secretary for Britain's colonies, introduced into the House of Commons a bill entitled "A Bill to Make More Effectual Provision for the Government of the Provinces of Lower and Upper Canada and to Regulate the Trade Thereof"[2]. In the House of Commons it became known as the Canada Government and Trade Bill.

The bill consisted of three parts: one applied to Canada those principles[3] of free trade which had earlier in the year been extended to the British West Indian colonies;

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2 P.A.C., Wilmot Papers, pp. 9-19.

3 The depressed condition of British agriculture in 1821 and 1822 coupled with a similar condition in the Canadas caused British legislation in the House of Commons in 1822 that marked the beginning of the change in policy under which the Navigation Acts were relaxed. In 1822 Britain found herself incapable of consuming the wheat and grain exported from the Canadas because the British Corn Law of 1815 had forbade any imported grain, even from the colonies, to be sold in the United Kingdom's market until the price of indigenous grain reached a certain level. To mitigate the hardships of the colonial grain export problem, two bills were introduced into the House of Commons on April 1, 1822 whose aim was to increase the commercial intercourse of British colonies with other nations. One bill increased the freedom of trade between British possessions in America and the West Indies, and other places in America and the West Indies; the other did the same for trade between British possessions in America and the West Indies and other parts of the world, exclusive of America and the West Indies. These two bills of April 1, 1822 became statutes on June 24, 1822. See statutes in Arthur G Doughty and Norah Story, Documents Relating to the Constitutional History of Canada 1819-1828. Ottawa, 1935, pp. 98-101 and pp. 101-103 respectively. Summary of these two trade acts may be found in The Annual Register, 1822, London, 1823, pp. 198-200.

a second class of provisions related to the distribution and appropriation of certain duties between the two provinces of Lower Canada and Upper Canada; and the third, and most immediately consequential part of the Bill, concerned the proposed changes in the constitution of the Canadas, as fixed by the Act of 1791, and was introduced to bring the two provinces into a closer union by incorporating their legislatures[4]. The intention of the bill, according to Wilmot, was "to assimilate the Canadians to the language, manners, habits and above all, the laws and institutions of Great Britain"[5].

Although the bill floundered in the House of Commons, Edward Ellice, Secretary of the Colonies Bathurst and his Under Secretary Wilmot had attempted to prevent opposition to any part of the bill in Parliament. The overt challenge to the integrity of Sir James Mackintosh, the leader of the opposition in the House of Commons to the proposed union, cast by Ellice's remark alleging Mackintosh's personal

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4 Wilmot considered the third part to be the most important. See Robert John Wilmot-Horton, Exposition and Defense of Earl Bathurst's Administration of Canada 1822-1827, London, 1838, p. 4.

5 Robert John Wilmot-Horton, op. cit. Appendix B, "Examination of the Right Honourable Robert John Wilmot-Horton (before the Select Committee on the Civil Government of Canada, 1828), p. 61.

knowledge of the first draft of the bill as well as his agreement not to oppose the Union Bill provided that the contents could be made out to the satisfaction of the House of Commons, illustrated the protective shield the promoters of union attempted to establish. Shocked by the apparent desertion and breach of promise, Ellice ruefully lamented that "he doubted whether the measure would have been proposed" [6] if Mackintosh's change of mind had been known.

Sharing Ellice's conviction, Wilmot corrected the history of the Union Bill of 1822 as written in the Annual Register for 1822 by adding an omission, namely, "that Sir James Mackintosh opposed the measure of Union after he had given his most unqualified assent to its being introduced, coupled with the assurance that he would not oppose it" [7]. Completely agreeing with his Under Secretary, Bathurst asserted that "the projected measure of the Union . . . was submitted to by His Majesty's Government to the House of Commons . . . in consequence of a distinct impression . . . that it would have met with an almost unanimous concurrence in that House . . . . It was the distinct anticipated

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6 Parliamentary Debates (in the British House of Commons), New Series, Vol. VII, July 18, 1822, column 1709. Henceforth, this reference will be cited as Parliamentary Debates.

7 Robert John Wilmot-Horton, op. cit., p. 5.

(provision) of that support which alone induced His Majesty's Government to bring it forward at the time, and . . . to connect it with other measures which it was of paramount importance to pass without delay"[8]. Ellice and Wilmot were over confident when the bill began to move through the House of Commons. Wilmot wilted under the attack on the proposed union; whereas, Ellice, a more skilled parliamentarian, responded to Mackintosh's criticisms.

On the day that Wilmot proposed his Canada Government and Trade Bill, he had to compete for time with the Scotch Juries Bill and a discussion on the Irish Butter Trade. As had been planned, Ellice hastened to stand, as soon as the Under Secretary had completed the proposal, and exhorted the House of Commons that a measure of such importance should be taken in committee as soon as possible. Wilmot then approved Ellice's suggestion which both of them knew would be made and then fixed a date for the committal of the bill.

When the Speaker recognized Sir James Mackintosh, the two promoters of the Union Bill expected to hear, as they thought had been agreed, a repetition and possibly an elaboration of their own comments on the proposed Canada

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8 P.A.C., RG 7, Vol. 12, Colonial Secretary to Dalhousie, Bathurst to Dalhousie, January 13, 1823, p. 150.

Bill. Their planned tactic to obviate opposition shattered when Mackintosh calmly informed the House of Commons that he agreed the bill was important since its object was to "consolidate the two provinces of Canada, by effecting an union between them, and incorporating their legislatures", but that he could not agree to it "without affording ample time to the people of the provinces, and the legislatures by which they were represented to express their opinions"[9].

Mackintosh did not oppose the uniting of Lower and Upper Canada; he did oppose the arbitrary action of Parliament to unite them. He did not deny the power of Parliament to unite them by arbitrary action; he did counsel caution in the use of that arbitrary power. He did not assert that the opinions of the people and legislatures of the Canadas would be binding on Parliament; he did assert the right of the people and legislatures to express opinions on what he claimed to be "the most sacred rights of the people"[10]. These rights were never stated, but the most important one was what a liberal of 1822 would call a constitution, a constitution that was claimed inviolable once granted by Britain to a colony.

Shaken by Mackintosh's apparent treachery, Wilmot

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9 Parliamentary Debates, June 20, 1822, column 1199.

10 Ibid.

managed to utter a regret that the Scotch knight had elected to oppose the bill before he had heard "the peculiar circumstances which rendered it necessary". Had Wilmot then read the bill and made way for the debate on the Scotch Juries Bill, he would have avoided a flagrant admission that he was totally unaware of the advanced thought circulating in politics regarding the colonies and England. In the response to Mackintosh's plea for the opinion of the people, Wilmot emphasized that it was not "necessary to apply to the people of the provinces for their consent to the measure, since their present constitution was derived from an act of the British legislature and of course subject to any modification (by that body)"[11].

Mackintosh had not used "consent", but "opinion"; he had not used "constitution", but "sacred rights". Wilmot misinterpreted Mackintosh's meaning of "opinion", but interpreted correctly his meaning of a "sacred right". In the debate, it was Wilmot who first claimed that the people in the Canadas had a "constitution", but it was Mackintosh who defended the right of the people in the Canadas to express opinions on any change in their constitution affecting the structure of their government. Wilmot stopped speaking and read the bill for the first time.

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11 Ibid.

Ellice realized to a greater extent than did Wilmot that if Mackintosh continued to oppose the bill, the union had no possibility of being effected in 1822. Hart Logan regretted[12] that Ellice doubted the Canada Bill would pass immediately and entreated him to exert all efforts to get it through the House of Commons. Logan did not realize the opposition that the bill had encountered; in fact, he was rather flippant in his nonchalant assumption that Ellice would have no real troubles in the House of Commons and thereafter that Ellice could simply solicit the good services of Earl Grey in the House of Lords to shepherd the bill into law.

In January 1822, Logan had advocated Union of Lower Canada and Upper Canada, but was rather vague on his reasons. Within reach of his aim in June, 1822, this Montreal merchant revealed his true hope that union would eliminate "the short-sighted policy and anti-commercial notions of the French-Canadians"[13]. It was imperative that there be no postponement because the intrigues of the priests and notaries would cause great problems.

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12 P.A.C., Wilmot Papers, Logan to Ellice, June 28, 1822, p. 164.

13 Ibid.

Attempting to marshall all the pressure possible to affect union, Logan found no one in London at that time who felt much interest in Canada. His cohort, Robert Gillespie, a British merchant trading in Canada had gone to Scotland, so he referred Ellice to John Galt[14] who would inform Logan about the type of petition that would effect the greatest advantage in Parliament. The result of the Ellice-Galt-Logan endeavour was a petition signed by many of the London merchants who supported the union and whose petition Ellice placed before the House of Commons on July 23, 1822.

Complaining that the dissensions in Lower Canada not only retarded the improvement of that colony, but also precluded adequate security for a merchant, Robert Gillespie

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14 John Galt, 1779-1839 - a Scot novelist whose stories on Scottish life had established his reputation as a novelist by 1820. During that same year he was appointed London agent for the Canadian claimants for compensation in connection with losses sustained during the War of 1812. After William Halton, the provincial agent of Upper Canada in London, died in January 1822, Galt sought to not only replace Halton, but also to enhance the position of provincial agent. With the passing of the Canada Trade Act Galt desired to be the medium of communication with the representatives and merchants and general interests of the colonies and to attend to public questions. Under the circumstances after the above-mentioned act, Galt thought there should only be one agent for the two provinces. See: Canada Q, Vol. 332, pt. 1, p. 155, Galt to Wilmot, London, December 13, 1822.

later urged[15] that a reunion of the two Canadas would end the revenue division difficulty between them, permit the English mercantile interests to be represented in the House of Assembly, enable more English representatives to be involved in government affairs, and assure more general improvement. With a greater English influence in the Assembly, he knew that his interests, if not himself, would be better represented in Canada.

Gillespie was representative of those London merchants trading in Canada who were imperfectly acquainted with problems in the Canadas, who desired law and order in a colony as most conducive to secure investment, and who usually viewed the proposed union of the Canadas as their business contacts in the Canadas did. Isolated by three-thousand miles of ocean, Logan's cohort considered Lower Canada solely as an area of investment. His main concern was the risk encountered by his capital and he thus sought to eliminate all investment hazards, such as that of mortgages.

Having become a land speculator involuntarily, this London trader endeavoured to end the mortgage difficulties

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15 Report from the Select Committee on the Civil Government of Canada, pp. 211-216. These pages covered Gillespie's testimony before that committee.

that this involvement thrust upon him. As a London merchant it had been his custom to accept landed property as security for advancements which he made to merchants in Canada. Were the merchants to default, Gillespie would commence a law suit in the courts in Canada to confiscate the land only to find that the property had been previously mortgaged, a fact that was undisclosed until rival claimants came forth during the lawsuit. Logan's friend was convinced that the entire problem could have been eliminated by the Lower Canadian House of Assembly's passing a law to establish register offices in which would be listed all mortgages and incumbrances. With this accomplished, according to Gillespie, there would have been nothing remaining to prevent merchants from doing business in Canada.

The English businessmen who made money in Lower Canada, according to Gillespie, usually deposited it in banks in England or invested it in that country while they continued to live in Canada. They were reluctant to invest it in land in the Eastern Townships because there were no registered titles. If, however, any investment in land were made it was always in common soccage tenure and the general pattern was to purchase a tract of virgin land, retail one-half of it, while the other half remained untouched so that the settlement on the first half would increase the value of the second half. In the Eastern Townships the lack of clear

titles and the denial of political representation greatly lessened English settlement, so the speculator avoided purchases in that area because of the difficulty in making sales.

Having possessed valid reasons for avoiding a land investment in the Eastern Townships, Gillespie revealed a prejudice for English business practices in commercial and legal matters. Although he did not know why the French law of descent and the French law of personal property operated to prevent permanent residence of English merchants, he was determined that they did. Such vincible ignorance of the law did not really affect Gillespie because, if he wished, he could avoid French institutions completely and invest solely in English oriented areas.

As a result of their respective geographical locations, Gillespie and Logan also differed regarding their attitude towards the French Canadians. The London trader's most derogatory remark was that the Canadians were bad agriculturists because they followed the old French idea of grazing land one year and ploughing it the next without the rotation in the American-English system. This method he attributed as the cause of the lack of surplus grain in seigneuries for export, a condition which was unfortunate for English exporters. It did not occur to him that perhaps the reason for the low Canadian grain surplus was

precisely the fact that the English controlled the exporting facilities. As far as he was concerned, there was absolutely no threat of the resurrection of a link between Lower Canada and France, for not only was French immigration to the British colony nil, except for a few priests, but also there was almost no direct trade between France and Lower Canada. In any discussion he held with Logan on the issue of the French Canadians, Gillespie likely listened patiently until the storm had ceased.

Since Logan was among his business contacts in Lower Canada, Gillespie found it most practical to assert that "there is not generally an objection in principle to the union of the two provinces"[16]. Certain that the English in Lower Canada would not object, positive that the majority of the inhabitants in Upper Canada would not object, and convinced that any French-Canadian discontent could be eliminated provided that the act of union were just and that the French-Canadian laws and religion were not disturbed, the London trader posited reunion as the panacea for all problems.

Robert Gillespie rendered evidence that the French-Canadian consideration of the English businessman as a commercial predatory transient without any real and lasting

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16 Ibid., p. 216.

interest in Lower Canada was valid. Having a mutual interest in money, the London merchant and the Lower Canadian merchant shared similar problems regarding advancing credit and land investment in Lower Canada and also agreed on the feasability of union to eliminate these problems. Although the London trader and the Montreal merchant usually agreed on union of the Canadas, they often differed widely regarding the extent to which the French Canadians were a problem and how union could eliminate that problem.

Although both businessmen, the London trader, Gillespie, and the Montreal merchant, Logan, had distinct and separate interests on certain points. The former had only his money in Lower Canada; the latter had his environment as well as his money in that colony. The London trader could assume a detached business view of the French-Canadian threat to English interests; the Montreal merchant could not, for he lived within French-Canadian society. Gillespie could have accepted his Lower Canadian investments as a financial loss and have directed his capital to other areas; Logan, on the other hand, had capital invested, possessed at least one building in Montreal, and had established business contacts in Lower Canada and likely in Upper Canada. He could divorce himself from the Montreal business community only with great difficulty. He had three alternatives, namely, to re-establish himself in Upper Canada, in

the United States or in Britain. Since none of them was so appealing as the entrepot of Montreal, Hart Logan had determined to protect his interests in any way possible.

While John Black and Hart Logan hastened to accumulate as many signatures as possible on a petition from London merchants in the support of union, a London merchant, who was a native of Scotland, determined to afford the French Canadians an opportunity to avail themselves of Sir James Mackintosh's suggestion. This Scot, William Parker, who had resided in Lower Canada from 1780-1793 and from 1793-1811 had made about twenty voyages to that colony, was the complete antithesis to Gillespie and Logan.

This Francophile urged Lord Bathurst not to proceed "until the sentiments of the inhabitants shall have been ascertained". He impressed upon the Colonial Secretary that "the hurrying of the measure, without giving the Canadians a hearing, is pregnant with the most disastrous consequences"[17]. Unshaken by the events of June 20, 1822, when the Canada Bill had been introduced, Bathurst and Wilmot were still adamant in pursuing the full content of the bill, for two days later the Under Secretary informed

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17 P.A.C., Wilmot Papers, William Parker, D. Monro and G. Stansfield to Bathurst, July 8, 1822, p. 166.

Parker:

> I am to acquaint you (as directed by Lord Bathurst) that the measure having been brought forward in Parliament after a full consultation and strong convictions of its expediency, his Lordship cannot recommend that it should be withdrawn in the present stage of its progress[18].

William Parker could have been another Hart Logan, or Robert Gillespie, but circumstances caused the exact opposite. Having succeeded as a partner in a French-Canadian Montreal business in 1784 which had extensive connections with Canadian merchants, he had an opportunity to meet many of these merchants who stayed at his Canadian partner's home in the Montreal district when they came to the town at the head of navigation of the St. Lawrence River. Logan's detestation of the Canadians was countered by Parker's appreciation of them as the most "loyal, brave and hardy race . . . on the face of the globe . . . who are capable of the greatest military exploits"[19]. Since Lower Canada abounded with young French-Canadian subjects with great talents and the best education, Parker could comprehend no reason why these subjects should be welcomed not

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18 Report from the Select Committee on the Civil Government of Canada, R. (Wilmot) Horton to William Parker, July 10, 1822, p. 233.

19 Ibid., p. 234. The views stated by Parker before the committee were considered to be applicable to him in 1822.

only into all parts of the government, but also "offered every privilege of independence consistent with their remaining (a colony)"[20] dependent on the Crown.

According to Parker, English businessmen in Lower Canada tended not to consider themselves as permanent residents. This attitude caused the French Canadians to consider them "not as fixtures, but as movables, and therefore (they) have not that confidence in them that they have in their own educated countrymen"[21].

The criterion of permanent residence to illustrate attachment to Lower Canada was supplemented by that of area of investment. Gillespie had explained that English merchants in Lower Canada did not invest in that province because of the mortgage problem there or because there were better opportunities in England. Parker claimed that since only a few made sufficient profits to invest in anything except their own business, there was not any money for investment. He did agree with Gillespie that those Englishmen who did make money were inclined to return to Europe, but primarily because the Canadians, lacking confidence in them, would not elect such English to the House of Assembly of Lower Canada.

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20 Ibid., p. 236.

21 Ibid., p. 233.

Although almost excluded from the assembly, the small group "who are called English, but consist of American loyalists, American citizens and emigrants from the United Kingdom, chiefly from Scotland"[22] monopolized nearly every place of honour and emolument under the government to the exclusion of the French Canadians. It was one thing to have their homeland preyed upon by the transient English merchant, but the Canadians could not endure the English oriented Lower Canadian Executive's prolonged exclusion of them from worthwhile political positions for reasons such as that "they are a conquered people and French and not fit to be trusted"[23].

Certain that the French Canadians were loyal, Parker's main concern centred on the effect of a war with the United States, for he feared that if Britain failed to accommodate the French-Canadian aspirations prior to such a catastrophe that the French Canadians would have no reason to support the British, in which case Canada would be defeated. Parker noted that the only reason the French Canadians appeared virtuous, quiet and loyal was not that Britain allowed their language, religion and customs to exist, but because the French Canadians "think (they) have a

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22 Ibid., Parker to Huskisson, January 28, 1828, p. 235.

23 Ibid., p. 236.

better chance (of preserving those things) with the British connection than with the American"[24]. Britain had been fortunate that the choice between the lesser of two undesirable ends had been Britain.

As a British merchant living in London in 1822 who had personal business experience in Lower Canada, William Parker's views on the proposed union of Lower Canada and Upper Canada were a complete exception as were his understanding of the position and grievances of the French Canadians. He asserted that the object of his fellow British countrymen in proposing union was "only to overpower them (the French Canadians) in the House of Representatives"[25]. Having been voluntarily assimilated by the French Canadians, Parker came to possess a rare point of view for a British merchant in 1822. When Louis Joseph Papineau and John Neilson, agents for the petitioners against union, arrived in London in early 1823, William Parker furthered their cause by every means at his disposal.

The haste of Parker in presenting his plea to the Colonial Office was second only to that of the Society of Friends, commonly called Quakers. The significance of their request was that Bathurst and Wilmot were unable to answer it

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24 Ibid.

25 Ibid.

themselves, but had to consult Upper Canadian Attorney-General John Beverly Robinson. The two Quakers representatives requested that "if no law at present was in force in the colony, to allow the affirmation of members of their Society in voting for Representatives to the Legislature Body"[26] to be provided for in the Canada Government and Trade Bill.

Wilmot and the Colonial Secretary were involved in sufficient controversy about that bill without attempting an amendment to correct a serious omission, namely, a clause stating who could vote. Robinson afforded them an answer to obviate the problem by reporting to the Under Secretary that "there is nothing in the proposal which can deprive them of the right to vote"[27]. This was really a negative answer and therefore weak. The Attorney-General's grounds for that decision were simply that the Quaker had always enjoyed that right in Upper Canada. Minority groups, such as the Quakers and the Mennonites, were never considered during the preparation of the Union Bill at the Colonial Office. During that preparation there were only two groups

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26 P.A.C., Series Q, Vol. 332, pt. 2, Public Offices and Miscellaneous 1822, J. Neatly and J. Elliot to Wilmot, June 29, 1822, p. 415.

27 Ibid., Robinson to Wilmot, July 1, 1822, p. 436.

as far as the consultants were concerned - Canadian and English.

The day after Robinson submitted his decision on Quaker voting rights, James Monk informed Wilmot regarding certain inadequacies in the change of tenure clauses. Robinson really had no reason to remain in London because Sir James Mackintosh was not opposing any part of the Canada Bill dealing with trade; whereas, Monk was still trying to remain in the good graces of Lord Bathurst so that his application for a pension would not be in vain.

Monk had submitted his data about change of tenure with some anxiety, for he was apprehensive lest his advice during the preparation of the Union Bill had caused him to be a persona non grata at the Colonial Office. Heartened by the friendly manner in which Wilmot had received his comments, Monk submitted a suggested course of action to affect the completion of the Union Bill.

What could be better than opening up another offensive, since the thrust via the House of Commons had become mired? In order to moderate the inevitable discussion on union that would ensue in the Canadas, the Colonial Office was to call an early meeting of the local legislatures to receive a communication of what had been before parliament under its consideration, and of its standing over on the matter of union for a short period of time. With the

initiative coming from the Colonial Office rather than from the spontaneous clamour of the people, there could be provision made for accepting petitions and thus avoid the occurrence of popular meetings of discontents.

Were the Colonial Office to take no action in the dilemma following June 20, 1822, then the session of Parliament that introduced the measure would have closed before any advice from the Canadas was available and then "the opposition might present the same charge of precipitancy armed with all the rancorous effervescence during three months popular combination in the colonies"[28]. Monk could not extricate himself from the terrible possibility of a democratic rising with its demagogues, public clamours, hostile exertions and turbulent opposition.

The plan had merit for by working through the local legislatures the Colonial Office would have had better control of the discussion. On the other hand, the Governor of Lower Canada and the Lieutenant-Governor of Upper Canada had not been officially informed about the Union Bill, so they could not have been expected to greet Monk's sudden improvisation with vigour. Moreover, the upper and lower

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28 P.A.C., Wilmot Papers, Monk to Wilmot, July, 1822, p. 290. The letter was undated, but closely followed a letter dated July 2, 1822.

houses could claim legislative incompetence to even deal with such a matter affecting the constitution without consultation with the constituents. Of course, the Colonial Office could have despatched the communication for the legislatures via someone versed in all facets of the union proposal, but whom: Monk? Marshall? Robinson? Stephen? Ellice? or Wilmot?

Wilmot ignored Monk's suggested diversion and prepared for the next encounter with Sir James Mackintosh on July 18, 1822. In the previous day of debate in the House of Commons, the parliamentarians present had listened to speeches on maritime rights, the cause of the Greeks, British consuls in Brazil, a national monument in Scotland and at last listened more intently to the debates on the Irish Insurrection Bill. On the day designated to bring in the Canada Government and Trade Bill for its second reading, Wilmot, Ellice and Mackintosh had to wait until the debate on the Retail of Beer Bill was completed.

No one opposed Wilmot's motion that the Speaker leave the chair so that Parliament could commence an open debate on the Canada Government and Trade Bill. Lest there were to be any doubt of his intentions, the Under Secretary for the Colonies gave priority to that part of his bill which would "alter the constitution of the provinces of Canada, which had been established by the Act of 1791", but he informed the House of Commons that the third part of his

bill, dealing with provisions to settle the appropriation of duties between Upper Canada and Lower Canada, would be considered first because "it was the anomalous position of the provinces in reference to these duties, that led to the necessity of remedial measures"[29].

For Wilmot at this point in the debate, it was the duty sharing impasse that necessitated the interference by the Colonial Office. This interference was constitutionally sound, but it lost its validity in the transition Wilmot made between the customs problem and union of the Canadas. Blaming the customs commissioners from Lower Canada for the deadlock of 1819 without attempting to discover why they pursued such action the Under Secretary asserted that "it was natural for the government of this country (Britain) to consider whether some measures might not be adopted which by uniting the two provinces, and incorporating their legislatures, might consolidate the interests of the two colonies"[30]. According to Under Secretary Wilmot, union was expedient to execute most effectually certain measures of mutual interest to Upper Canada and Lower Canada.

To assert that the pressing necessity arising out of the difficulty of adjusting the claims of the two provinces

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29 Parliamentary Debates, Vol. VII, July 18, 1822, column 1698.

30 Ibid., column 1699.

could be settled best by union was redundant in July, 1822, for in the previous March, Lord Bathurst had already informed Lieutenant-Governor Maitland "that a Bill will be submitted to Parliament to regulate the proportions of the Revenue Collected at Quebec to which the Provinces of Upper and Lower Canada may be respectively entitled"[31]. That despatch had been sent before the British cabinet had sanctioned the proposed union of the Canadas; in fact, it was sent even before John Beverly Robinson arrived in England. Wilmot made no attempt to explain how union could have executed the customs regulation in a more efficient manner than the then separated legislatures of the Canadas.

Wilmot's position was thus that the duties question had led to the necessity of remedial measures, namely, the regulation and arbitration of these duties, and that these measures would function best in a united Canada. The primary purpose of union, however, was not to provide a financial remedy, but "to bring the two colonies into a closer union, . . . so that the English language and spirit of the English constitution might be more completely diffused

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31 P.A.C., RG 7, G 1, Vol. 60, Colonial Secretary to Maitland, Upper Canada 1821-1824, Bathurst to Maitland, March 8, 1822, pp. 16-17.

among all classes of their population"[32].

Wilmot was confident that Fox's abstract principles of 1791 could certainly be implemented in 1822 to provide for a truly English colony. Perhaps Wilmot did not consider the content of his bill with sufficient care, for immediately after explaining how the union would make Canada more English, the Under Secretary claimed that all rights and privileges then enjoyed by the people in the Canadas would not suffer in any way. Again, he made no effort to explain how these rights and privileges could continue to flourish in a political system designed to further the English language and the spirit of the English constitution.

In a feeble effort to counter Mackintosh's challenge on June 20 that the projected union should cease until the feelings and opinions of the people were consulted, Wilmot pointed out that every means had been taken to procure the best information on the subject; that the measure was deemed decidedly beneficial to both provinces, and that the measure of union had received the complete sanction of those who, from their position and experience, were best qualified to appreciate its merits[33]. Such vacuous utterances belied

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32 Parliamentary Debates, Vol. VII, July 18, 1822, column 1700.

33 Ibid.

either an unbelievable hauteur, or more likely, a superficial understanding of the interests of those who advised him on the bill. Mackintosh could have questioned the bill ad infinitum on those statements if he had so chosen.

As a stalwart advocate of reform, innovation and liberty, Sir James Mackintosh concentrated upon the abstract principle of liberty to thwart the proposed Union Bill. The attempt by the Colonial Office afforded Mackintosh and his followers an excellent opportunity to criticize the Government on a bill that had direct bearing on the problem of liberty.

Magnifying the issue out of all proportions for a definite effect the Scottish doctor called upon the House of Commons to view Wilmot's intent as "no less than to change the constitution of two great colonies, to abolish their separate legislatures and to unite them into one"[34]. If that intention was not a sufficiently grave affront by Parliament on the liberty of the Canadas, Mackintosh supplemented it with his crucial claim that "the people of Canada had no means afforded them of approaching the House - no opportunity of presenting petitions, but they were to be

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34 Ibid., column 1701.

taken at once by surprise and to have the whole frame of their constitution altered, without being able to express a single sentiment"[35]. It would not have mattered if the colony in question had been Newfoundland or the Bahamas; Mackintosh's attack on the Government would have followed the same pattern and the government faction could not have refuted the charge so long as no violent disorders existed in the colony.

At no time did he question Parliament's power to execute the union, but he did question the legality of such an act because there was no precedent. Grandiloquently he informed the House of Commons that the Under Secretary's Bill was the first time the British parliament had proposed to pass an act for the union of the legislatures of two colonies. Here again, Mackintosh took the case for union out of the solely Canadian context, placed it in an imperial situation, and exposed it as illegal.

The strongest argument of all against the unilateral action of the Imperial Parliament concerned the reaction to the bill in the other colonies. Since there were only about forty or fifty members present when Wilmot first introduced the bill and since only that number were present for the second debate, radical Mackintosh pointed out that

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35 Ibid., column 1702.

other colonies would feel very insecure and alarmed if such a small number could actually abolish the legislatures of two colonies without their consent. Especially since the colonists had no representation in the House of Commons, Sir James Mackintosh nobly assumed the moral duty to represent them and their interests[36]. Mackintosh concluded that those clauses pertaining to Union ought to be deleted and made into a separate bill.

Wilmot did not attempt to refute any of Mackintosh's arguments. Had the Colonial Under Secretary been aware of some of the past history of British colonial policy, he could have countered at least one of Mackintosh's arguments. In October, 1684, King Charles II had withdrawn the Charter of the colony of Massachussetts as a result of the colony's prolonged intransigence with the Crown[37]. That colony was under royal authority until 1688 when James II reorganized all the American Northern Colonies under a single government. The new political division, called New England, possessed no assembly. Laws were made by the Governor on the advice

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36 Ibid., columns 1703-4.

37 J.W. Fortescue, ed., Calendar of State Papers, Colonial Series, America and West Indies 1681-85, London, 1899, Rule in Chancery confirming the judgment against the Charter of Massachusetts, October 23, 1684, p. 706.

of his council[38]. This policy of consolidation ceased abruptly when James II was forced off the throne in 1688.

Ellice still did not have the petition being circulated by Logan and Black, but he did have an answer for Mackintosh. Ellice agreed with Mackintosh's principles, but argued that the situation in the Canadas merited a deviation from those principles. Unlike the Scottish knight, he attempted to keep the case for union in the cadre of the Canadas.

This was Ellice's last opportunity to vindicate the trust the Colonial Office and Cabinet had placed in his assurances. Commencing by summarizing the Scottish doctor's view of the union bill as "an unnecessary interference with the rights of the legislatures of the two provinces in matters which were either permanently settled, or left to their regulation by the Quebec Act"[39], Ellice, after explaining how that act had failed, asserted that the question in 1822 was whether the House of Commons would adopt the

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38 J.W. Fortescue, ed., Calendar of State Papers, Colonial Series, America and West Indies 1685-1688, London, 1899 Commission to Sir Edmund Andros to be Governor of New England, April 7, 1688, p. 525.

39 Parliamentary Debates, Vol. VII, July 18, 1822, column 1705.

whole measure of reuniting Upper Canada and Lower Canada, or start in the session of 1822 a perpetual interference on the part of parliament with the proceedings of their assemblies. Ellice had countered with a generalization in the Canadian context.

Agreeing with Mackintosh again, Edward Ellice implored the House to consider how Britain, by retaining the right to interfere in the regulation of trade and commerce was really depriving both legislatures of the most valuable privilege of an independent legislature. Were Britain to abandon that retained right and grant union, then the united assembly would possess full fiscal privileges.

Moreover, agreeing with Mackintosh again, Ellice urged that all people in the Canadas should possess equal political rights, but since the Townships were not represented at all and since the English in the Seigneuries were almost totally excluded from the Lower Canadian Assembly, there was an imperative need to unite the Canadas and provide for these English civil rights.

Exposing his entire role in the union proposal, he admitted he had originally suggested and pressed the adoption of union on His Majesty's ministers, but then cleansed them of any duplicity by confessing that he had grossly but unintentionally deceived them in leading them to expect support instead of determined opposition. After briefly

lamenting Sir James Mackintosh's alleged deception, Ellice completed his confession by admitting that he was certain the French inhabitants would object, but would remain loyal and accept a measure which sooner or later would have been necessary[40].

The longer he spoke, the better his ideas became. After his soul-bearing confession, Ellice challenged Mackintosh's condemnation of Parliamentary interference in peacetime regarding alterations in a colony by asking if all interference was bad or could it be used for good. Pointing out that Mackintosh had admitted that union was a good measure, Ellice claimed that Parliamentary interference, done for a good end, was valid. Parliament could be an umpire[41].

Another generalization put forth to counter the Scottish doctor did not answer, but only asked, regarding colonies, how long a colony ought to be dependent upon England or for the interest of both, how long should England control her colonies. Mackintosh did not answer.

The fact that Ellice's ideas improved did not compensate for some errors he too made. He claimed that the

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40 Ibid., column 1710.

41 Ibid.

chief justices of both provinces attended the preparations of the bill. That statement was partly true. Chief Justice of Upper Canada, W.D. Powell, had been in England around the time the Canada Government and Trade Bill had been introduced into Parliament, but none of the others who participated in the preparation of the bill mentioned him. The only evidence found to prove he was in England was a notice in the Quebec Gazette that Powell arrived in Kingston from England on August 12, 1822[42]. Moreover, James Monk was not Chief Justice of Lower Canada, but rather Chief Justice of the Court of King's Bench for Montreal. Ellice claimed the approval of union by every person in England connected with Canada. Wilmot must have not shown him Parker's letter. Edward Ellice claimed the sanction of the bill by the most competent and weighty local authorities from the Canadas. True, they sanctioned the union measure, but Ellice omitted the reasons.

Just as Ellice had urged the House of Commons not to consider the timing of the bill late in the session as some devious scheme, the House leader, the Marquis of Londonerry stressed that the lateness of the session was no excuse for not adopting a measure of great advantage to Canada[43].

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42 Quebec Gazette, No. 3247, August 19, 1822, p. 2.

43 Parliamentary Debates, Vol. VII, July 18, 1822, column 1714.

Protecting his position, the Marquis concluded that the government of the Canadas was needed. The House then divided upon the question of the bill going into committee. Wilmot, as one of the tellers for the Government, anxiously counted forty-eight "ayes" while the two Opposition tellers counted fourteen "noes" for the Government for a majority of twenty-four. After two comments on the Scotch Juries Bill, the House adjourned at two o'clock in the afternoon when an observant member noted that only twenty-four members were present.

Incensed at Mackintosh's assumption of the existence of Canadian inviolable rights, James Monk refuted that claim lest it precipitate undesirable events. All Monk's questions to Wilmot simply stressed the result of the lack of a division of power between Canada and Britain and a lack of the division of power within governments in the Canadas.

Denying that Parliament had ever granted to Lower Canada any absolute, irrevocable rights, the Chief Justice of the Court of King's Bench in Montreal district urged that any claim ought to be abolished. There was absolutely no need to seek the opinion of the Canadas on the proposed union because that would acknowledge that these rights existed. Monk reinforced Wilmot's views that it was unnecessary to call upon any colonial legislature to advise on an expediency adopted and added a new argument for royal

interference to restore to the subjects of Upper Canada what was assured them in 1763 as British subjects.

Where the Scottish doctor had warned about the reaction among the other colonies if Britain were to be unilateral in its colonial constitutional changes, James Monk envisaged worse consequences if the policy of consultation applied equally to all laws respecting trade and commerce. Mackintosh could find no precedent for uniting two colonies; whereas, Monk could find no precedent for the policy of consultation.

The Chief Justice of the District of Montreal provided Wilmot with a very good general colonial policy, but the Under Secretary never utilized any of it in the last encounter over the union bill in the House of Commons. Emphasizing the role of the Imperial Government in perfecting present colonial political systems rather than changing them, Monk suggested the permanent principle of prosperity, utility and security as the foundation of any contemplated improvement. Having a policy of elasticity towards colonial administration, the Colonial Office could improvise innovations needed for the improvement of the main principle. The old Francophobe could not resist an exhortation to Wilmot to implement the principle and policy immediately by executing a union to bring order to the affairs of Lower Canada "which hitherto has confusedly and turbulently during

sixty years been more or less agitated to its present state and now manifests anarchy, controversy, dominion claims and consequences arising from colonial energies under such impressions"[44]. He would have definitely agreed with Ellice that the withdrawal of the proposal of union would be a totally disastrous indication of the influence and power of His Majesty's Government.

By July 20, 1822, the union clauses were hanging in the balance. Monk's spectre of alarums was seconded by the more reasoned and deliberative views of another Colonial Office consultant. It was absurd that the Opposition had inflated its one main objection, namely, the lack of any consultation with the inhabitants, out of all proportion until the general inference created was that if the Government persisted in such a dastardly deed as union, it could expect an insurrection. This consultant must have been present at some of the discussions during the preparation of the bill, for on this question of previous consultation with the provinces he reminded Wilmot that the propriety of previously consulting the provinces was maturely weighed and deemed to be unnecessary and inexpedient.

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44 P.A.C., Wilmot Papers, Monk to Wilmot, July 20, 1822, p. 134.

The adviser then afforded Wilmot another excellent argument to thwart Mackintosh. The Scottish knight had urged consultation with the people regarding the change and Ellice had admitted that the French Canadians would oppose union completely. Now, since the popular leaders in Lower Canada had always professed a perfect confidence in, and an implicit submission to the will of the Imperial Government, the Government could use this faith and loyalty to eliminate the Opposition's main objection. The Opposition could have hardly agreed to the tenet that this faith and loyalty of the French Canadians in and for Britain existed only when the Canadians made demands on Britain and also existed when Britain had decided on a policy for the Canadas[45].

Since the debate on the Union Bill suddenly had found itself involved in a deep discussion about theoretical colonial policy, the success or failure of it had far more consequences than mere victory or defeat of a government measure. Withdrawal would signify the incompetence and impotence of the Colonial Office; produce a heady draught in a small minority of Opposition critics, and create a prece-

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45 P.A.C., "Observations on the Canada Bill with reference to the proposed postponement of the clause for uniting the Legislature and to the omission of the clause for continuing duties", Wilmot Papers, pp. 160-163, no signature and no date except July, 1822. The author was likely George Marshall.

dent for the colonies with which they could obstruct further colonial measures.

Edward Ellice opened the third and last debate on the Canada Government and Trade Bill on July 23, 1822. It was a short debate in which Mackintosh briefly answered Ellice's charge of deception. Also in the third debate, Francis Burdett, who was usually with the radical sentiment switched his support to the Union Bill. He thought that all the opposition was a little over-scrupulous "in the cause of technical objections and abstract principles"[46]. Burdett's position only brought criticism upon himself. One of the members of the Opposition to the Union Bill informed the House that if Burdett had had any real interest in the bill, he would have come on a previous evening "to convince them by argument on a subject of which he had not before said one word"[47]. Burdett had been absent on July 18, 1822 when the important vote was taken to determine if Wilmot's bill could be committed to a committee.

Burdett's support of the bill was likely due to his friendship with Ellice. It would be rather difficult otherwise to explain why Burdett, who earlier in the session had introduced a bill to free Henry Hunt, the alleged instigator

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46 Parliamentary Debates, Vol. VII, July 23, 1822, column 1731.

47 Quebec Gazette, No. 3253, September 9, 1822, p. 1. This information was not included in the Parliamentary Debates.

of the riot at St. Peter's Field, Manchester, from jail would be supporting a government bill which his fellow radicals opposed.

The Marquis of Londonerry stood and declared the withdrawal of the bill because of the lack of expected support; the appearance of unexpected opposition; the late period of the session. Reaffirming his Government's position, the Parliament had the right to legislate for the best interests of the most distant dependencies without previous communication with those dependencies; the House leader explained that the Government would not press the measure of union, although he was certain the best interests of Canada would suffer[48].

Very soon after the inglorious interment of the Canada Bill of 1822 by tabling on the floor of the House of Commons, Wilmot found solace in a regurgitation of his third battle in the House. He had failed and he was responsible to Bathurst who answered to Prime Minister Lord Liverpool. Fully aware of this situation, the Under Secretary attempted to explain away part of the blame by informing the Colonial Secretary that in the third debate he and Lord Londonerry,

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48 Parliamentary Debates, Vol. VII, July 23, 1822, column 1731.

the Foreign Secretary, had baited Mackintosh until the Scottish doctor rose to explain the nature of the communication of his opinion upon the bill which he had made to Ellice. It was possible that Mackintosh would have incriminated himself by an inept disclosure of his role, but the Scottish knight deftly foiled that Wilmot-Londonerry thrust.

Carefully detailing the account of the Mackintosh affair to absolve himself of as much responsibility as possible, Wilmot claimed that he had never had a personal meeting with the leader of the Opposition against the Canada Bill, but had received all communications via Ellice. For Wilmot "Mackintosh's opposition rested upon the non-information of the Canadas with respect to the Bill", an objection which "would have been utterly conclusive against the Bill when Ellice spoke to him"[49], because the Colonial Office would never have contemplated the overruling of an objection based on the want of communication to the provinces. By stressing the intermediary role of Ellice, Wilmot further protected himself with well disguised inferences that perhaps Ellice had misinterpreted certain views of Mackintosh for which the Under Secretary was by no means responsible. It

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49 P.A.C., Series A8, MG 24, Private Letters to Lord Bathurst, Wilmot to Bathurst, undated. Approximate date may be established by items discussed, namely, those in debate of July 23, 1822, p. 167.

was thus that Robert John Wilmot projected certain aspects of his guilt in the fate of the Canada Bill of 1822.

The toll of the failure of that bill fell heaviest on Ellice who had bolted his usual political climate to provide for the preparation of the bill and then during the third debate on that bill, the great promoter of union "declared he would have no more doings with them (the Opposition)"[50]. Having fallen out of favour with the Government and the Opposition, Ellice certainly had many things to ponder.

In case that the alleged deception of Mackintosh and the possible errors in interpretation by Ellice were not enough excuses, Wilmot added a lament about the attitude of the Government in the House of Commons to his bill. Not only had the Government failed to attack any sort of importance to the bill, but also had pushed the bill from day to day up to the late period when it entered the House of Commons. In fact, he was "not allowed to open it on the second reading, but it was deemed more polite to slur it over"[51]. Wilmot was suffering from a considerable amount of pique at the end of July 1822.

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50 Ibid., p. 168.

51 Ibid.

The whole question of the Government's interest or more precisely the interest of the King's ministers in the Canada Government and Trade Bill of 1822 was of much interest. In 1810 Ryland had had an interview with the British Cabinet to discuss the general affairs of Canada especially as noted in Governor Craig's report to the Colonial Office in that year. At that meeting, Lord Liverpool, the Secretary of State for the Department of War and the Colonies, had inquired about how a sufficient number of English could get into the Lower Canadian House of Assembly to assure the English interest. Craig's civil secretary posed the only way to the reunion of Upper Canada and Lower Canada. Lord Bathurst, the President of the Board of Trade as well as the Right Honourable Spencer Perceval, Prime Minister, wondered if the Assembly of Lower Canada could have been alarmed and intimidated into better behaviour at the next meeting. This afforded Ryland an opportunity to acquaint those in that interview with the conditions in Lower Canada. Herman Ryland recalled one more person at that meeting, namely, Sir William Grant, the Master of the Rolls, who had acquired an "intimate knowledge of Canadian affairs by a short residence in the province (of

Lower Canada)"[52] when Ryland was a boy.

In 1822 Lord Liverpool was Prime Minister, Lord Bathurst was the Secretary of State for the Department of War and the Colonies and Sir Charles Grant was a member of Parliament who had remained Master of the Rolls from 1810 to 1817 and then served as Chief Secretary for Ireland from 1818 to 1821 at which time he was succeeded by the Right Honourable Henry Goulbourn who moved from Under Secretary for Colonial Affairs to Chief Secretary of Ireland in early January 1822. Spencer Perceval was dead. By 1822, therefore, there were at least three of the King's Ministers well aware and well acquainted with the affairs of especially Lower Canada. Goulbourn may be included with Liverpool and Bathurst because of his knowledge gleaned at the Colonial Office. Grant was sitting in Parliament in 1822 as was Lord Charles Somerset, Joint-Paymaster from 1810 to 1816.

Others who were among the King's Ministers in 1810 and held the same portfolio continuously at least to 1822 were Lord Eldon, Lord High Chancellor; Earl of Westmoreland,

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52 Robert Christie, Public Documents and Official Correspondence, Montreal, 1866, Ryland to Craig, August 23, 1810, p. 146.

Lord Privy Seal; Viscount Palmerston, Secretary of War; the Right Honourable Charles Long, Joint Paymaster-General of the Forces till 1816 and thereafter Paymaster; and the Earl of Chichester, Joint Postmaster-General.

Those who were among the King's Ministers in 1810 but had switched portfolios by 1822 were: the Right Honourable Robert Saunders Dundas, President of Board of Control for Affairs of India from 1810 to 1812 and, as Lord Melville, was First Lord of the Admiralty from 1813 to at least 1822; and Marquis Wellesley who was Secretary of State for Foreign Affairs in 1810 and thereafter was without portfolio until he obtained that of Lord Lieutenant of Ireland in 1822[53].

The proposed bill for the Union of Upper Canada and Lower Canada had to get the sanction of the cabinet. Ellice claimed[54] that the ministers were divided regarding the pro-

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53 The observations about members of the King's ministry were reached by a study of the members of the ministry from 1810 to 1822 with regard to the office each member held and the length of the tenure of that office. Lists of the King's ministry were obtained from the Annual Register: 1810, p. 513; 1811, p. 318; 1812, p. 233; 1813, p. 326; 1814, p. 342; 1815, p. 326; 1816, p. 354; 1817, p. 241; 1818, p. 367; and 1822, p. 396.

54 Parliamentary Debates, Vol. VII, July 23, 1822, column 1709.

posing of the bill. Those in favour of proposing the measure were likely the following: Lord Liverpool, Lord Bathurst, Right Honourable Henry Goulbourn, Lord Londonerry, Foreign Secretary; Right Honourable Sir Charles Long, Paymaster General of the Forces; Right Honourable S.R. Lushington, Joint Secretary of the Treasury; Right Honourable F.J. Robinson, Treasurer of the Navy and President of the Board of Trade; Right Honourable T. Wallace, Vice-President of the Board of Trade; Right Honourable Nicholas Vansittart, Chancellor of the Exchequer for Britain and Ireland; Solicitor General Gifford, Right Honourable C.W. Wynne, President of Board of Control for Affairs of India; and Right Honourable William Huskisson, First Commissioner of Land Revenue.

The first two, Liverpool and Bathurst, were placed in this group not only because of their long acquaintance with the situation in the Canadas, but because without the sanction of the Prime Minister and the Colonial Secretary, a colonial measure would cease in the cabinet. The next two, Goulbourn and Londonerry, were selected due to viewpoints expressed in the debates on the Canada Bill of 1822, and the rest on the rather tenuous basis that they were present in the House of Commons when the vote was taken to determine whether Wilmot's bill should go into committee.

The sparse attendance at the debate showed the lack

of interest in the Canada Government and Trade Bill. The absence of government supporters allowed the possibility of the defeat of the bill. To avoid such a possibility, many of the King's ministers were present themselves for the vote to determine whether or not Wilmot's bill could proceed to the committee stage. Of the forty-eight who voted for going into a committee upon the bill, ten were members of the King's ministry[55]. No doubt Wilmot had grounds for complaint regarding the treatment of his bill by the government, but at the same time he would have to acknowledge that the presence of ten ministers for an important vote on his bill was of significance.

After the proposed union clauses were tabled, James Monk was more anxious about his pension than ever because his endeavours for the union had been shattered. So he concentrated on his main specialty, namely, land tenure in the Canadas and once again offered his services to the Colonial Office. By the end of July, his position in the service of the king became rather dubious because his initial leave of absence was expiring at which time his salary might cease because he had decided to remain in London. Without a pension or a salary forthcoming the aged Chief Justice of the Court of King's Bench for the District

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55 The Times, London, July 19, 1822, p. 3.

of Montreal decided to retire officially hoping that Bathurst could obtain a pension for him. A letter in August from Adam Gordon, an official at the Colonial Office, dispelled all these fears by informing Monk of a grant of an extended leave of absence. Monk enjoyed the latter part of that leave in Florence, Italy, where his leave was again extended during the winter of 1822 to 1823. Friends to the last, Monk graciously informed Wilmot that he would be back in London in the spring of 1823 to submit any advice needed regarding the government of the Canadas.

Marshall's career was far less fortunate. He had had no satisfaction from Dalhousie in obtaining a position in the government of Lower Canada even though Lord Bathurst had recommended that a place be found. Reluctantly, he had returned to England at the end of November, 1822 and placed his trust in the wisdom of the Colonial Secretary.

In August, 1822, Adam Gordon transmitted to Dalhousie the results of the Canada Government and Trade Bill on which Monk and Marshall had laboured. In this official transmission of the amended Canada Bill of June 1822, Gordon pointed out that the clauses regarding union of the legislatures had been omitted. The Government had decided to bring in the union clauses in a separate bill. The Government had further ordered that these clauses were to be printed and

allowed to lay over until the next session, although the possibility of a union bill in 1823 depended entirely upon circumstances and not on any government pledge[56].

The British government was aware of conflicting opinions about the advantage of retaining Canada and other colonies. So aware of these conflicting opinions was the government that it issued officially the reasons for retaining Canada. Wilmot accepted those reasons, but did not use those reasons in any way whatsoever during the debate on the union clauses in the Canada Government and Trade Bill of 1822.

Among the opposition in the House of Commons, the members of the group which advocated a continued loosening of Britain's ties with British colonies were known as Radicals. Their belief in the principles of democracy made them willing to grant the fullest self-government and even complete freedom to the colonies. They welcomed any colonial discussion the Conservative government of Lord Liverpool commenced because the Radicals could attack any government colonial legislation short of independence on the grounds that the Imperial government was interfering with the democratic rights of the colonists. The union

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56 P.A.C., Series C1, RG7, Vol. 12, Colonial Secretary to Dalhousie: Lower Canada 1822-23, Gordon to Ready, August 14, pp. 83-84.

clauses in the Canada Government and Trade Bill afforded the Radicals an opportunity to attack the government for interfering with the democratic rights of the people in the Canadas.

Bathurst, Ellice and Wilmot were fully aware of what would happen to the proposed Union of the Canadas when it was debated in the House of Commons. They attempted to obviate a government defeat by obtaining the consent of Sir James Mackintosh, who later led the Radical attack on the union clauses to avoid discussion of the union clauses. It was impossible to comprehend how the three of them ever convinced themselves that Mackintosh, who had defended the French Revolution so strongly in 1791, could abandon his principles of democracy and liberty to waive the union clauses. As Colonial Under Secretary for the Colonies, Wilmot ought to have had an investigation for precedents to defend his bill if the need arose. Furthermore, he ought to have broadened the defense of his bill by requesting a report on the advantages and disadvantages of the Union of the Canadas from Viscount Palmerston, Secretary of War and Lord Melville, the First Lord of the Admiralty.

CHAPTER IV

REACTIONS TO THE UNION BILL OF 1822 IN THE CANADAS

Edward Ellice had informed the members of the House of Commons that, as a guiding principle in formulating an opinion on the question of Union, they could assume the French Canadians to be opposed to the legislative Union of Lower Canada and Upper Canada. His further opinion that the remainder of the population of the Canadas would concur in the approbation was almost accurate regarding the English in Lower Canada. He failed, however, to anticipate the English separatism that appeared in Upper Canada. The English separatists in the upper province revealed themselves in their petitions and resolutions[1] which were prepared as a result of the British government's invitation to the people of the Canadas to express their opinions on the

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1 When a petition or set of resolutions is mentioned for the first time in the chapter, it will be identified completely. In addition, an abbreviated reference will be given. Thereafter the petition will not be referred to in the footnotes, but will be incorporated into the body of the chapter by way of the abbreviated reference. This method will be followed for the petitions and resolutions from Upper Canada in favour of Union as well as for the petitions from the English in Lower Canada.

proposed Union of the legislatures of Lower Canada and Upper Canada. The Upper Canadian separatists wished to maintain the status quo in 1822 so that their rights and interests could be preserved inviolate.

The basis of the preservation was an act of the British Parliament passed in 1791, namely, the Canada Act. The significance and meaning of the act varied according to whether the person considering the act was the Under Secretary for the Colonial Affairs who claimed that as an act of parliament it could be amended as any other act; whether it was the leader of the group in the House of Commons who opposed the passing of the Union Bill until the inhabitants of the Canadas were consulted because he claimed that the Canada Act was a sacred constitution of the Canadas; or, whether the person was an English unionist or an English separatist in the Canadas.

The English separatists in Upper Canada enshrined their constitution of 1791. The petitions from the County

of Leeds[2], the Township of Thorold[3] and the Home District[4] all agreed that it was a well deserved reward for the defence of King and country. The petitions from the latter two places, as well as the petition from the Counties of Lennox and Addington[5], considered the constitution of 1791 not only as a source of confidence in the protection of those not originally British subjects, but who had to come to Upper Canada for the benefit of English laws, but also as the pledge of security to Canadians' rights and liberties. The petitions of the County of Wentworth[6] and that of Leeds echoed the

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2 P.A.C., Series Q, MG 11, Vol. 165, The Petition of the Inhabitants of the County of Leeds in the Province of Upper Canada, pp. 68-73. Henceforth, this petition will be referred to as Leeds.

3 P.A.C., Series Q, MG 11, Vol. 333, pt. 1, The Petition of the Township of Thorold in the Niagara District, Upper Canada, pp. 85-90. Henceforth, this petition will be referred to as Thorold.

4 P.A.C., Series Q, MG 11, Vol. 164, pt. 1, The Petition of the Home District of Upper Canada, pp. 154-8. Henceforth, this petition will be referred to as York.

5 Kingston Chronicle, "Petition of the Counties of Lennox and Addington", November 29, 1822. Henceforth, this petition will be referred to as Lennox and Addington.

6 P.A.C., Series Q, MG 11, Vol. 333, pt. 1, Petition of the County of Wentworth in the District of Gore, pp. 64-72. Henceforth, this petition will be referred to as Wentworth.

sentiments of the English separatists in their testimony that the constitution of 1791 was so sufficient for the happiness and good government of Upper Canada that they would never forfeit its blessings.

For some of the Upper Canadians, the constitution of 1791 was an insulation from American institutions. Leeds illustrated this need for a psychological crutch when it informed Britain that the constitution left the people of Upper Canada without reason to envy the boasted liberty of their neighbours in the United States under a popular form of government. The petitioners from Leeds county dismissed any need to envy American liberty because they claimed that very same liberty from their own constitution which they considered as a solemn compact of the highest authority of the Empire and formed the legal guarantee of the liberty, property and rights of Upper Canada. York echoed this Americanization of the Canadas' constitution with the claim not only that it was given and received as a declaration of British liberty made to British born subjects having by birth an indefeasible right to such liberty, but also that it guaranteed these liberties by the solemn enactment of the British Parliament, an enactment which they felt certain would not be taken from them without their consent. Holding Britain to a strict interpretation of the Canada Act of 1791, York and Thorold were against all innovations in their

constitution without their expressed consent by the legislative act of Upper Canada, passed in due session by the King, Council and Assembly.

As Leeds and York represented a cause for the maintenance of the status quo so too did Stormont county,[7] but for entirely different reasons. Stormont's appreciation, derived from the British decision in 1791 to divide Quebec, was based solely on the basis that separation relieved the petitioners of Stormont from all apprehensions of an interest, being of French origin, which was at variance with their views and expectations. In many cases the English in Upper Canada wished the Canadas to remain divided in 1822 for fear that the French Canadians would have the ascendancy in the united legislature; whereas, in the Upper Canada legislature the English had the ascendancy by possessing the majority. Stormont, being near the dividing line separating Lower Canada and Upper Canada had an opportunity to observe the viscissitudes of the English in Lower Canada and sought to avoid similar problems in Upper Canada. A divided Canada could stand.

The proposed Union Bill, which attempted to unite

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7 P.A.C., Series Q, MG 11, Vol. 164, pt. 1, The Petition of the Inhabitants of the County of Stormont in the Eastern District, Upper Canada, pp. 165-72. Henceforth, this petition will be referred to as Stormont.

Canada, may be separated into two aspects, namely, the fact of Union itself and the various clauses stating the additional proposals that were to be implemented simultaneously with the Union, such as, the clause stating the qualification of candidates for the House of Assembly and the proscription of the French language.

There were two main themes permeating the petitions of the Upper Canadians who opposed Union. One theme was the threat of the French Canadians in a united Canada. The other theme was the unwarranted interference by Britain into colonial political freedoms.

The French-Canadian threat had gained disproportionate attention in 1822 as a result of the conflict over the revenue between Lower Canada and Upper Canada. The memory of the contentions and animosities emanating from that encounter were present even though a remedy, the Canada Trade Act of 1822, had come simultaneously with the information of the proposed Union. The Canada Trade Act of 1822 received slight mention. Leeds, Kent[8], Stormont and Glengarry all

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8 P.A.C., Series Q, MG 11, Vol. 164, pt. 1, Petition of the County of Kent, Western District, Upper Canada, pp. 158-9. Henceforth, this petition will be referred to as Kent.

9 P.A.C., Series Q, MG 11, Vol. 164, pt. 1, Petition of the County of Glengarry, Eastern District Upper Canada, pp. 172-4. Henceforth, this petition will be referred to as Glengarry.

considered that the act solved all pressing problems. Wentworth was grateful that the only ground of difference between Upper Canada and Lower Canada had been settled by the timely interference of Britain. The only Upper Canadian resolutions which dealt with this matter to any length were those of the Freeholders of Grenville[10] drawn up at Augusta. They claimed it had settled the revenue problem; had apportioned to each province its share of expenses attending the improvement of the navigation of the St. Lawrence; had secured a free outlet of Upper Canadian trade through Lower Canada that prevented the interests of Upper Canada from being injured by the admission of American produce into Lower Canada's market free of duty. From these points the Grenville resolutions concluded that no argument for unity of the legislatures of the provinces could be drawn on financial and commercial grounds.

Concerning the matter of Union, Leeds feared that it would just perpetuate the impasse which existed from 1819 to 1822 in which Upper Canada had played a minority role, had been reduced to a humiliating state regarding its control over customs laws and had had the disposal of its revenue in

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10 Kingston Chronicle, "Resolutions of the Freeholders of Grenville", November 29, 1822. Henceforth, these resolutions will be referred to as Grenville.

another power. Both this county's petition and the Grenville resolutions claimed that Union would have strengthened, not removed the existing animosities between the English and French, for the petitioners did not expect that two legislatures which could not agree on the subject of revenue while separate could be more unanimous when joined.

The Kingston resolutions[11] approached closer to the real fear of Upper Canada with the observation that the proposed Union, leaving the government and interests of the two provinces separate and distinct, would tend to submit the smallest province to the biggest and would place the laws and assured revenue in danger. Kingston agreed with Stormont that separate legislatures would avoid quarrels, afford an opportunity to adopt laws without any interference and possess a secure source of revenue.

Of all the petitions that commented on the future position of the English of Upper Canada in an united assembly, that of Wentworth was the most revealing. Attempting an equal and parallel assessment of Upper Canada and Lower Canada the petition reiterated the usual observation that Upper Canada, with British, Irish and late

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11 Quebec Gazette, "Resolutions of the Inhabitants of the Town of Kingston", December 2, 1822. Henceforth, this resolution will be referred to as Kingston.

American colonists easily united from a similarity of original language, customs and government; whereas, the Lower Canadians who sprang from a distinct origin, possessed a different language and different religion were wedded to their own peculiar manners and customs. Each group with its own legislature had enacted, adopted and retained laws suitable to its own usage, customs and local wants.

From these observations, the Wentworth petitioners concluded that it would be impossible for each province to have an equal advantage in an united legislature. After thirty years the two groups had become so discordant that for them to unite and render equal advantage to both provinces, an advantage that each had a right to expect after having had it before union, was impossible.

Uncertain whether the Upper Canadians would have that equal advantage, the petitioners pointed out that should the advantage be on the part of the Lower Canadians, then Upper Canada must be at their mercy and could not expect from them that attention to its own interests which needs and circumstances required. Remaining separate assured Upper Canada of the continuance of its position in 1822; Union threatened that position by possibly making the Upper Canadians part of a minority group.

The uncertainty regarding where the advantage would exist in Union was of concern because the two groups were

seemingly equal, having separate legislatures, in 1822 and that position of mutual equality of two different groups could not continue, but would necessarily produce efforts for ascendancy, create jealousy, strifes, contentions and would result in alarming consequences. The petitioners of Wentworth were not certain that the Upper Canadians could assume the ascendancy, so they opposed the Union.

A cursory perusal of the Wentworth petition could result in the impression that the petitioners were concerned with the position of the French Canadians for the sake of the French Canadians in an Union. The petitioners, for example, did not feel entitled to any possible ascendancy of Upper Canada over Lower Canada because the Upper Canadian population did not merit it. Such an act would have been unjust to their brethren in the Lower Province with whom they had neither any desire to quarrel nor to break in upon their rights and peace.

These arguments were well disguised pleas for separation. By stressing the injustice to be wrought upon the French Canadians through an Union, the petitioners attempted to prevent an Union in which their rights would be in jeopardy. Rather than claim that injustice would be perpetrated on them by the French-Canadian majority in an Union, these petitioners placed themselves in the role of benevolent brethren striving to protect the interests of

French Canadians. Their self-denial of the right to the controlling interest in a united assembly was made only because they thought such control in 1822 was impossible.

The York and Thorold Petitions used the argument for the rights of the French Canadians to the same purpose. York employed this argument to reinforce its condemnation of the power of the Governor to select two Executive Councillors from each province to sit in the House of Assembly. Such power would have given an unconstitutional control over the equal rights of the Lower Canadians whose rights were acknowledged as being as dear to them as the rights of Upper Canadians to the petitioners of York. By protecting the rights of the French Canadians, the petitioners were attempting to avoid any abridgement of their own rights.

The Wentworth petition had penetrated to the basic problem to be faced by both groups in an Union. It had outlined the power of a majority and the weakness of a minority. It had attempted an objective consideration of French-Canadian rights. This petition had concluded to oppose Union because a separate province would serve the interests of the English in Upper Canada better than would Union.

As the Wentworth petition had outlined best the position of the French Canadians, so the Stormont petition had outlined best the position of English in Lower Canada. Stormont, in fact, was the only petition against the Union

that commented on the English in Lower Canada.

Stormont was aware that the English in Lower Canada exerted all efforts possible to provide the Union to diminish the influence of that part of the population of French extraction; to increase the English influencing that proportion through proximity in the provinces and through efforts of the English of Lower Canada to promote the measure in Stormont. Stormont, however, opposed Union because that measure would not cease the main problem in Lower Canada, namely, the political differences between the branches of the Legislature in Lower Canada. Further political ferment was not the primary reason for the opposition, but rather the fact that Union would not only be prejudicial to Stormont's interests, but also create a legislature and place the English of Upper Canada in the position of English in Lower Canada.

The Stormont petition, however, was only a gloss of the sentiments expressed by one of the influential members of the county who was present at the meeting of the inhabitants of the County of Stormont at Cornwall on December 4, 1822. Archibald MacLean, the chairman of that meeting, was also a member of parliament for the county in the Legislative Assembly at York. His address to the meeting expressed candid views of English-French relations possessed in the border county of Stormont.

He informed the meeting that Britain's principal reason for dividing Quebec in 1791 was that the Loyalists might be free from all control in their legislature officers on the part of the French population in Lower Canada. Had Quebec remained united, the member of parliament from Stormont feared that the voice of the English group would have been overpowered by the French with the result that English laws would never have been adopted as the rules of decision. Had separation not occurred, MacLean told his fellow separatists that they would have always remained subject to the French laws against which they heard so much clamour by the English population in Lower Canada. Although he was fully aware of the reasons for Union advocated by the English in Lower Canada, he confessed that he was unable to discover any benefits that would accrue to Upper Canada; therefore, he opposed Union.

Assimilation of the French was inevitable; it was only a matter of time. According to Archibald MacLean the period was not far distant when English would become the language of the legislature and the courts. When English prevailed into those institutions, it would soon be general throughout the British province. Even if assimilation were immediate, however, he did not view it as so great an advantage as to induce Union. The risk was too great in 1822.

Especially penetrating was a reason he offered to support his argument that Union could not solve the division of revenue problem. He assured the meeting that even in a joint legislature, nothing would be conceded by Lower Canada that could be withheld. The English from Lower Canada in the proposed union legislatures could very well have been as adamant as the French from that province over financial concerns. There was no assurance that Lower Canadian English would support the direction of revenue to the improvement of Upper Canada interests. He reminded the people at the meeting that the disposition of Lower Canada negotiators to refuse concessions "was not manifested by Canadians only, but by the English members also, by these very persons who are relied upon by the friends of the Union to act in concert with the members of Upper Canada"[12]. To him the English in Lower Canada were opportunists seeking a way out of their dilemma. They would soon forget the role the Upper Canadian English had played in rescuing them through a Union, especially if a conflict of interests arose

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12 Kingston Chronicle, January 3, 1823. In 1821 the Lower Canadian negotiators for revenue sharing were: Louis Joseph Papineau, Austin Cuvillier, John Davidson, John Neilson and George Garden. Those from Upper Canada were: Thomas Clark, Alan Maclean and Jonas Jones.

over money. No other English separatist in Upper Canada discussed the probable conflicts between the English from Upper Canada and those from Lower Canada that would occur in the united legislature.

Every other petition against Union omitted reference to the English in Lower Canada, thereby divorcing themselves from the task of rescuing their fellow English in Lower Canada. That blow devastated the English in Lower Canada. The one petition against Union that admitted the English in Lower Canada had problems decided that the interests of English in Upper Canada took preference and would not hazard a Union for fear those interests would suffer.

The claim that the Union Bill violated liberty permeated Upper Canada. The York petition charged that the mode of introduction was highly unconstitutional as regards the liberty of Upper Canada. Grenville, Leeds, and Thorold supported York in the condemnation of the Union Bill as an unmerited deprivation of the constitution of 1791. Thorold viewed the constitutional act of 1791 as the pledge of Canadians' rights and liberties and regretted that such a great measure was to be torn from them against their will.

The Lincoln county resolutions[13] feared, from the

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13 Niagara Gleaner, "Resolutions of the County of Lincoln", January 4, 1823. Henceforth, these resolutions will be referred to as Lincoln.

outline of the bill in the public prints, that the British government was taking away the Canadian constitution and was placing a new one upon the people with such unfortunate clauses as the 500 pounds elector qualification, a clause which amounted to a prohibition of the elective choice of the people. The York petition agreed with the opinion of the Lincoln resolutions regarding the qualification clause as did all the English opponents of Union in Upper Canada. The same unanimous disapproval was lodged against the clause which extended the duration of the assembly from four to five years, principally because the petitioners thought it was an attempt to abridge their political rights and their control over their representatives.

The Union Bill's attempt to limit the greatest of parliamentary powers, namely, the control of finances, encountered further declamations. Leeds petitioned that the arbritary action of Britain to continue the allowances and salaries of those in official positions until the united assembly could make provision for them was objectionable because it concerned an appropriation of the people's money without the consent of the representatives of the people. Wentworth fulminated against the provision for the permanent supply of funds for the civil list and the administration of justice as an unwarranted deprivation of a great power of the assembly. Moreover, it denied the assembly the freedom to

alter the funds appropriated either by an increase or a decrease.

A resounding support by York of the constitutional act of 1791 as the source of Upper Canadian liberty was contrasted by the scathing denunciation by Wentworth of the Union Bill as a prostration of liberty. According to the York petition, the constitution of 1791 had been given and received as a declaration of British liberty made to British born subjects who had, by birth, an indefeasible right to such liberty. The Union Bill was placed in sharp contrast with the constitutional act when Wentworth moaned that the Union Bill altered the petitioners' constitution so as to destroy all liberty, without their knowledge, without their consent, and without any misconduct on their part amounting to a forfeiture.

Of the specific clauses in the Union Bill that reaped criticism, the sixteenth clause, which authorized the Governor-in-Chief to appoint two members of the Executive Council of each province to sit in every assembly clothed with all the rights and privileges of the other members of the assembly with the exception of voting, merited the greatest opposition. Stormont, York, Wentworth, Leeds, Lincoln, Thorold and Grenville all concurred in the opinion that this clause was a violation of British principle. Of these, Wentworth, Thorold and Leeds presented the most

telling arguments.

The county on the Niagara frontier considered the clause as an attempt to transform the House of Assembly into a mixed chamber of executive councillors and people's representatives, an attempt which would effect a total change of the established principles of the English constitution. Where Thorold pointed out its effect on the assembly, Wentworth suggested that the vesting in the Governor the power to put four executive councillors in the assembly would have given an undue influence to the Executive which, in the opinion of the Wentworth petition, already had enough power.

Wentworth further pointed out that in Upper Canada officers under the Government were not excluded from the legislature, but that every wish of the Government could be known and supported[14]. The blunt criticism of the power of the Executive in Upper Canada was at cross purposes with one of the aims of the Union Bill, namely, to strengthen the Executive and weaken the Assembly so that the latter could be better controlled.

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14 The inference here was that officers under the Government in England were excluded from the legislature and that the Union Bill presumed this was the case in Upper Canada. Actually, in England there were officers or officials under the Government in the House of Commons. The King's ministry was divided up between those ministers in the cabinet and those not in it. Those not in it could hold seats in the House of Commons.

Leeds' objection to this clause illustrated, in a way, the type of representatives in the House of Assembly. To that county the clause was particularly objectionable in a new colony where great talents were not generally to be expected. The Governor, with his power of appointment, could put the best talents in the Legislature Council or in the Executive Council. Leeds was concerned that the executive councillors in the assembly might assume the leadership of that body. Perhaps that was why that county warned that the clause would tend to destroy the happy balance of power between the different branches of the provincial legislature.

Glengarry and Lincoln stressed the clause as an abridgement of liberty. For both it was a prohibition of the elective choice of the people and Glengarry reinforced the liberty cry by condemning the clause as a gross infringement on the petitioners' rights as British subjects.

On the question of Executive intrusion into the assembly, all petitioners in Upper Canada against the Union adamantly opposed any apparent or real loss of power in the Assembly. Their aim was a strong Assembly capable of executing the objectives of the Upper Canadians. They could not tolerate any attempt to lessen that power. The attempt, by those involved in formulating the Union Bill in Britain to weaken the Assembly, met obdurate opposition in Upper Canada.

Another clause that encountered considerable criticism was the thirteenth which provided that no person would be eligible to a seat in the House of Assembly unless that person legally possessed lands and tenements of 500 pounds value. Thorold condemned the clause as a further attempt to abridge the Upper Canadian rights and strengthen the Executive. Lincoln, Leeds, York and especially Glengarry, denounced it as another prohibition of the elective choice of the people. Stormont informed Britain that Upper Canada already had a qualification for electors.

So enraged was Wentworth over this clause that the petitioners proclaimed that they would rather resign the representative right altogether than have the House of Assembly on such a basis. It would disenfranchise some electors with the result that some counties would not be able to select qualified persons to act for the whole population.

Lincoln criticized the clause on the grounds that it would have maintained the evil of holding large tracts of wild lands unimproved in the hands of a few individuals to maintain their eligibility for a seat in the Assembly[15].

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15 Niagara Gleaner, "Lincoln Resolutions", op. cit., p. 2.

Wentworth heartily concurred in the opinion that one of the effects would have been the continuation of the nuisance caused by wild, uninhabited land.

Stormont considered the clause particularly offensive since it came at a time when the value of real property was in a depressed state, an economic problem that further abridged not only the number of electors, but also the people's choice of electors. The assertion of a depressed economy was reinforced with Wentworth's reference to it as a reason for forbidding permanent provision for the civil list and the administration of justice. Also a British parliamentary commission investigation into the depressed state of agriculture in Britain in 1822 referred to warehouses in London filled with Canadian grain that could not be let into the market until domestic British grain reached a certain price.

Other objections to various clauses were more scattered among the petitioners. Only Leeds and Augusta included criticism against the twenty-seventh clause which provided for the continuance of the salaries or allowances of officers or other persons in the legislatures until the first meeting of the united legislature. The basis of the objection was that the Union Bill, in effect, caused the legislature of Upper Canada to remain in power a year longer than it had been elected to serve. That situation was a violation of the

rights of the inhabitants, especially since the clause would necessitate the disposal of public money of the province without the consent of the representatives of the people.

Wentworth was the sole source of objection to the provision for the permanent supply of the Civil List and for the administration of justice. Such provision, according to Wentworth, would have rendered the legislature nominal and unsubstantial as well as deprived the Assembly of the only power and effective check necessary to balance the otherwise overwhelming force of the Executive. In addition, such a permanent allotment of funds would have parted with the power to accommodate the expenditures of the legislature to the means its resources could enable it to grant, or to curtail enormous contingencies or to afford compensation to services that called for reward. The Assembly of Upper Canada had to maintain the power to vary any expense according to the strength of the economy of that province.

Generating more widespread disapproval was clause eighteen which provided for the extension of the term of the Assembly to five years from the previous four year term. York and Leeds complained that it would unnecessarily diminish the value of the elective franchise. Wentworth petitioned that the change would extend too far the period before which the representatives could again meet their constituents.

Throughout the criticism of various clauses of the Union Bill there was a reoccurring problem, namely, the power of the Executive Government in Upper Canada. The only one more responsible than Wilmot for the lack of political foresight in determining the effect of these clauses would have in Upper Canada was John Beverly Robinson. Perhaps his being among the foremost politicians in the Government Party and a member of the Executive Council insulated him from the grievances of his province. On the other hand, he may have desired the weakening of the Assembly and strengthening of the Executive in his own province.

The excessive power of the Executive in Upper Canada was a repeated issue. Thorold complained that a quinquennial parliament and an extension of the qualification strengthened the Executive influence of which there was no deficiency in Upper Canada. Leeds noted that the Executive in the Assembly gave too much influence to the Executive of which there then was enough. Wentworth concentrated on the provisions for a permanent supply of funds for the civil list and the administration of justice to show how such a supply would deprive the House of Assembly of the only power and effective check necessary to balance the otherwise overwhelming force of Executive power. The same petition criticized the two Executive Councillors from each province in the House of Assembly as a measure without precedent,

which would give undue influence to an Executive already possessing enough power for all the purposes of salutory government.

Geographically, according to Leeds and Stormont, the provinces were too wide and long for a joint legislature to administer the government of a united Canada. Wentworth petitioned that the two Canadas were too large an area for one government even if the same group was dispersed throughout. The fact that there was a separate group in each part simply strengthened the argument for separation. Grenville and Stormont noted that the distance to the united assembly would be so great that few Upper Canadians could sacrifice the time and money to be a representative. As a result, few in Upper Canada would seek to be a representative and political interest in Upper Canada would wane. In addition, Stormont and Leeds petitioned that the distance would place unfair burden on the outlying inhabitants of Upper Canada. The geographical and distance arguments were weak. The petitioners could have proceeded to their assembly at any distance provided they wanted to be part of that assembly. If they did not, then any distance would have been too great.

Disguised by various reasons, the fear of losing the capital of Upper Canada, York, to the east was most prominent in the petitions of York and Thorold. Both agreed that the capital would be beyond Upper Canada and this

concern amounted to Upper Canada being deprived of a legislature. As a further argument for separation, these two were joined by Leeds to complain that a distant capital would reduce the Upper Canadian elective choice because fewer could sacrifice the time and expense. The petition from the Upper Canadian capital and that from the Niagara frontier county petitioned that not only would the people and government be wholly estranged, but also that in time, the whole political structure would end in confusion to the disgust of all. The separatists wanted their capital near them so they could control it.

Any sympathy mentioned on behalf of the French Canadians in an Union was rendered to further the aim of separation. Had there been genuine interest, the petitioners would not have omitted all reference to the clause proscribing the French language in fifteen years. Moreover, there was no reference made to the position of the Roman Catholic Church envisaged in the Union Bill. There were no restrictions placed on the adherents of that religion, or on the clergy prior to the Union Bill. Had the Union Bill been passed, however, a clause stipulated that in Lower Canada any future clergy performing clerical duties could possess the dues and rights enjoyed before 1822 by the clergy, only if they received their position with the approbation and consent of Her Majesty expressed in writing by the Governor,

a Lieutenant-Governor or person administering the government of province of Lower Canada. In effect, the Crown was to control appointments.

As limited as any mention of the French Canadian was by the Upper Canadian separatists, it was still second to that of the English in the seigneuries of Lower Canada and the English in the townships of Lower Canada. Only the Stormont petition considered the position of the English in Lower Canada. The conclusion there was that the most imperative thing was to avoid falling into the position that the English in Lower Canada found themselves. The best way to do that was by maintaining the status quo, namely, separation.

If any address, petition, letter or set of resolutions possessed a comprehensive expression of the Upper Canadian separatist view, it was the letter to the editor of the Kingston Chronicle signed "An Upper Canadian". The author presented an apology for the status quo.

According to the letter, finance was the only important problem between Upper Canada and Lower Canada. That problem was settled by just claims awarded by the British parliament. The solution of 1791 with Britain's right of interference had not failed in Upper Canada. The "Upper Canadian" acknowledged, however, that the solution had failed in Lower Canada, but that failure was no reason for Upper

Canada to jeopardize its position in 1822 to succor the English in Lower Canada.

Separation had wrought many benefits on Upper Canada. It had allowed the English a majority in the legislature; whereas, if the English had been voting in the assembly of an united Quebec, the present Upper Canadians would have been voting in the minority from 1791 to 1822. Division had afforded an opportunity for the English language to flourish; whereas, in an united Quebec the French language would have diffused and lessened the broad distinction which existed between French and English in 1822. Separation caused the founding of York and the ensuing settlement; whereas, if Quebec had remained united the Upper Canadian capital and its environs would not have been in existence.

Without separation, the Upper Canada of 1822, according to "Upper Canadian", would not possess all its cultivated land. The province's roads and public buildings would not exist because they were financed by a tax assessment on land, the principle of which could not be tolerated by a French legislature.

The apologist for the status quo stressed the concord and harmony that existed between the Assembly and the Lieutenant-Governor. He had special praise for the Lieutenant-Governor Maitland, in office in 1822, because Maitland had had nearly fifty new townships surveyed and

granted, chiefly on condition of actual settlement, without imposing new burdens on the people.

In contrast, he described the problems of the English in Lower Canada. They laboured under a majority of French Canadians against which the English group could not contend. The apologist accused the English in Lower Canada of seeking an accession of strength to increase the influence of the Governor so that his administration could be extended throughout the whole colony. "Upper Canadian" castigated the Lower Canadian English for making no sacrifice while endeavouring to achieve certain commercial projects. Union was beneficial for the English in Lower Canada because they had "everything to gain and nothing to lose"[16].

Upper Canada, however, had everything to lose and nothing to gain. The constant theme of the letter was that "it is different with Upper Canada". The author wanted to be sure of Upper Canadian benefits in an Union, but there was no proof that any gain at all would follow Union. The apologist for the status quo demanded evidence to deny the possibility that "if we join (the English in Lower Canada), shall not we too be swallowed up?"[17].

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16 Kingston Chronicle, November 8, 1822.

17 Ibid.

The Upper Canadian friends of the proposed re-union of the legislatures of Lower Canada and Upper Canada lacked the unanimity that permeated the Upper Canadian separatists. In Upper Canada the unionist petitions and resolutions[18] possessed support for the Union, but not always for Union under the same conditions; whereas, the separatist petitions and resolutions possessed the unqualified opposition to the projected measure. Although bound together by their support for Union, the friends of Union in the upper province did develop another strong rallying point to reinforce their decision; similarly, the separatists had emphasized consistently such a concomitant. The anticipated inadequacy of the Canada Trade Act passed on August 23, 1822 was the one complaint that unionists included most often in their petitions together with their support of Union *per se*; whereas, in the separatist petitions it had been the threat to Upper Canadian political liberty that always accompanied the separatist opposition to Union *per se*. Since the Canada Trade Act had not yet revealed an inadequacy by the time the petitions were submitted, the plea of the unionists that the act would not settle the revenue problem was only speculation. On the other hand, the

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18 Petitions and resolutions from Upper Canada in favour of Union will be identified as previously explained.

denunciation of the Union Bill as an attempt to thwart the liberty of Upper Canadians was not speculation because the controversial clauses within the Bill could be compared unfavourably with the political liberties that were then in existence in Upper Canada at the time of the proposed measure. The unfavourable comparison lent strength to the attempt by the separatists to preserve the status quo; whereas, the problem of the division of revenue between the two provinces reinforced the unionists attempt to alter the political structure of Lower Canada and Upper Canada, but was ineffectual because it could not be demonstrated.

After stating their support for Union, the petitioners of the County of Leeds[19] at their meeting held in Brockville on November 14, 1822, pointed out that an united assembly would possess more weight in the event of another appeal to England. They anticipated another appeal from their intimate acquaintance with the relations between the two provinces. That acquaintance caused them to doubt the adequacy of the Canada Trade Act and to conclude not only that differences over revenue would reoccur, but also that

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19 Kingston Chronicle, "Resolutions of the Friends of Re-Union in the County of Leeds", November 29, 1822. Henceforth, these resolutions will be referred to as Brockville-Leeds.

these differences would only be settled by another appeal to England. Union would end that need because the need for a divided revenue would cease. A resolution from the town of Niagara[20] echoed much the same proposal. Union, according to the town of Niagara friends, would bestow greater and complete rights in the Assembly of united Canada so that any interference of Britain in Canadian matters would be precluded.

The same incompentcy theme was present in the petition[21] of the town of Kingston which claimed that only the executed Union Bill would end any possible inadequacies of the Canada Trade Act. This petition further claimed that the act in question was insufficient not only because Lower Canada still would attempt to impede the division of customs, but also because whenever Upper Canada would complain about the division, those complaints would be a source of irritation between Upper Canada and Lower Canada.

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20 Kingston Chronicle, "Petitions of the Town and District of Niagara", December 6, 1822. Henceforth, this petition will be referred to as Niagara.

21 P.A.C., Series Q, MG 11 Vol. 333, pt. 1, The Petition of the Town of Kingston in the County of Frontenac, pp. 4-8. Henceforth, this petition will be referred to as Kingston-Frontenac.

Friends of re-union of the County of Grenville included among their resolutions[22] passed at Prescott on November 9, 1822, a resolution that Union was the only remedy to put the provinces of the Canadas on a perfect equality in relation to commerce and finance. Concurring completely in the economic necessity of Union for Upper Canada the friends of the measure from the town of Cornwall[23] in Stormont County concluded in their petition of November 18, 1822, that since Lower Canada and Upper Canada were linked by one common communication, they ought to be united especially for import duties. Williamstown was the place where the supporters of Union in the County of Glengarry[24] met on November 12, 1822 to render, among their resolutions giving unqualified support of the Union Bill, that they were

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22 Kingston Chronicle, "Resolutions of the Friends of Re-Union in the County of Grenville", November 22, 1822. Henceforth, these resolutions will be referred to as Prescott-Grenville.

23 Kingston Chronicle, "The Cornwall Petition", December 6, 1822. Henceforth, this petition will be referred to as Cornwall-Stormont.

24 P.A.C., Series Q, MG 11 Vol. 164, pt. 1, The Petition of the Inhabitants of the County of Glengarry, pp. 172-4. Henceforth, this petition will be referred to as Williamstown-Glengarry.

concerned, in spite of the Canada Trade Act, that differences between the legislatures regarding revenue might still exist. On November 9, 1822, resolutions passed at Perth by the friends of Union from the County of Carleton[25] claimed that the revenue problem caused by the division in 1791 could not be adequately settled by the terms in the Canada Trade Act, but only by Union. Friends of Union who meet at the Court House of the County of Sandwich, Western District[26] passed the same resolutions as the Perth petitioners had. In these petitions and resolutions the question of revenue division was of paramount importance.

Among the various expressions regarding the revenue problem, those in the petition from the supporters of Union in the Township of March, District of Johnston[27] were the

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25 Kingston Chronicle, "The Petition of the County of Carleton", November 22, 1822. Henceforth, this petition will be referred to as Perth-Carleton.

26 Kingston Chronicle, "Resolutions of the Meeting of Friends of Re-Union at the Court House, Sandwich, Western District", January 17, 1823. Henceforth, these resolutions will be referred to as Sandwich.

27 P.A.C., Series Q, MG 11, Vol. 165. The Petition of the Inhabitants of the Township of March, District of Johnston, Province of Upper Canada, pp. 90-94. Henceforth, this petition will be referred to as March.

most developed. Without Union, according to this petition, Upper Canada would continue to be deprived of a principal source of revenue. Unable to participate in the collection of revenue at Quebec, Upper Canada had no way of stopping Lower Canada from spending collected customs on the lower province's civil list. The question of customs was vital because Upper Canada had no sources of revenue beyond customs, except that which resulted from its own internal trade or from local taxation. As far as the collection of customs was concerned, the March petition claimed that Upper Canada was in the same state as an inland country because it was excluded from the management of the port of Quebec; whereas, the petitioners asserted that Upper Canada had an equal right to participate in maritime trade.

Other economic concerns of the unionists in Upper Canada included management of the port of Quebec, the diversion of Upper Canadian trade to the United States, the attraction of businessmen and capital to the Canadas and the use of the Saint Lawrence River by Upper Canada. These problems lacked the general concern possessed by the revenue question.

Among the petitions considered, that of the Township of March was the only one that informed Britain of Upper Canada's exclusion from the management of the port of Quebec as well as that trade was insufficiently secure to induce

men of capital to invest in trade in the Canadas or to locate businesses in the provinces. Although it omitted reference to the points mentioned in the March petition, the Kingston-Frontenac petition did mention the role of the Saint Lawrence River in Upper Canadian business. Friends of Union in Kingston noted that the Canada Trade Act had made no adequate provision for Upper Canadian use of the Saint Lawrence channel. This along with the resolution that there were no laws to help improve the navigation of the Saint Lawrence were of grave concern to the Kingston petitioners who considered such provision and such laws of paramount importance since the development of the Saint Lawrence River was an object of first importance to Kingston.

The County of Sandwich and the town of Niagara concurred in Kingston's concern regarding navigation on the Saint Lawrence River. Sandwich friends of the Union, noting that the Canadas were dependent primarily upon products of the land, resolved that the Union would greatly benefit agriculture and the improvement of inland navigation. The latter was of principal importance because in 1822 American traders were able to undersell their Canadian counterparts on the far Western Upper Canadian frontier as a result of superior American inland navigation. Niagara petitioners complained that all attempts made by Upper Canada to improve

inland navigation failed as a result of Lower Canadian opposition to capital improvement of the Saint Lawrence River system. Development of navigation along the Saint Lawrence River was another strong economic reason for Union, but it also lacked the general concern caused by revenue question.

The sole mention of the possibility of Upper Canada's resort to an American Atlantic port and the resulting loss of loyalty to Britain was credible, but was resolved on an erroneous basis. When the Cornwall-Stormont petitioners included concern that Lower Canada could deprive access to Britain and force improper intercourse between Upper Canada and United States, the petitioners belied a lack of acquaintance with the colonial trade bills passed on June 24, 1822 which stated the conditions under which such trade could be facilitated between the Canadas and United States.

Any geographical considerations for Union were more closely allied to economic problems than to political concerns. Petitions and resolutions from the towns of Cornwall, Kingston and Niagara, the County of Leeds and the township of March considered the geographical advantage of Union. Cornwall urged that the political division of 1791 was an artificial separation of what was united by nature. Kingston noted that the geographical situation of Upper Canada made it dependent upon Lower Canada for the Saint

Lawrence River to import and export goods. March added that division rendered Upper Canada in the same state as an inland country. A seemingly political argument with a geographical basis was included in the Brockville-Leeds resolutions which pointed out that division was stopping the practical good effects of a representative system of government because Upper Canada was in a dependent and detached position in relation to Lower Canada. Detached from all political participation in Lower Canada, it had no way of knowing the total value of customs collected so that it could be determined if the one-fifth received by Upper Canada was a valid one-fifth. Also expressing a connection between geography and commerce was the town of Niagara petition which resolved that Lower Canada, from its geographical position, could act offensively against the interests of Upper Canada when the two provinces came into collision on commercial matters.

One petition, in particular, challenged the assertion that Upper Canada and Lower Canada were even divided. According to the township of March petition, a boundary of an imaginary line and a navigable river was really not a boundary at all. An example of a term being given to the division between the two provinces was included in a comment about internal improvement in the Cornwall-Stormont petition. On that occasion the division was referred to as

the "line"[28] between the seigneury of Longueil and Glengarry County.

The unionists and the separatists both viewed the Canada Act of 1791, the British Act passed in 1791 entitled "An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's reign entitled 'An Act for making more effectual provision for the Government of the Province of Quebec in North America, and to make further provision for the Government of the said Province'", as their constitution. The unionists considered it as a basis for something better; whereas, the separatists sought to maintain the political structure legislated by the constitutional act of 1791. Seeking reasons for a change in the political division of the Canadas, the unionists often included reference to their constitution.

Among the petitions consulted, that of Brockville-Leeds advocated the greatest support of the constitution. The petitioners urged not only that the constitution form the basis of political liberty since it was considered as the source of all rights, liberties, privileges and immunities, but also that the powers of the Legislative Council and Legislative Assembly in each province be kept in the Union.

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28 Kingston Chronicle, "Cornwall-Stormont Petition", December 6, 1822.

Concurring with Leeds in the support of the constitution of 1791 were Kingston-Frontenac and Prescott-Grenville and of the two latter petitions that of Kingston further urged, along with Brockville-Leeds, that certain amendments to the proposed bill be enacted to preserve the liberty of the constitution in the united legislature.

Other friends of the Union did not support the sympathy of Leeds with the constitution or that county's emphasis on liberty. Both the petition from the Township of March and that from the County of Carleton termed the division of 1791 a complete failure because the separation had not accomplished its aims. Both of them as well as the Sandwich petition noted that the division had caused the revenue problem and March further added that as a result of separation into two provinces internal improvements had been impeded as had the administration of justice.

March did not elaborate the problem of neglected internal improvements, but Cornwall-Stormont did. According to the friends of Union who drew up the Cornwall-Stormont petition, there was no direct land communication with Montreal and Upper Canada. They attributed this lack to the conduct of the persons holding the seigneuries near the line and to the inattention of the Lower Canadian legislature regarding the internal improvements of that part of Lower Canada. Moreover, they claimed that Lower Canada had not

opened a different communication laid out by the surveyors appointed by the government. The Cornwall petitioners complained that the state of the main highway of the province from the eastern boundary to the Coteau du Lac was absolutely disgraceful. The road was near impassable and the mail and travellers were committed to an uncertain conveyance across Lake St. Francis subject to delays and the weather.

No petition, except that of March, included the administration of justice as a reason for Union. The petition claimed that the functions and authority of the magistrates of one province were not available in the other without delays. Moreover, the petitioners added that a person convicted on a charge in one province could avoid punishment by escaping to the other province. No examples were included.

Brockville-Leeds had pointed out some of the merits of the constitution; whereas, March, Carleton, Cornwall-Stormont and Niagara petitions mentioned some of the demerits. Supplementing these demerits was the comprehensive denunciation of the constitutional act of 1791 by the petitioners of the Prescott-Grenville who had met at Prescott. They asserted that:

> past financial and commercial griefs of Upper Canada (were) solely attributable to a detached system of Government and Legislation hastely

> adopted, without a due consideration of the situation of the country as respects that uncontrolled access to the Ocean on which (Upper Canada's) commercial and agricultural interests (rest) and without providing by permanent enactments for a just participation on part of the province in the government of and dues accumulated at the great outlet and general seaport of this continent[29].

The petitioners concluded that division stopped the practical good effects of a representative system of government because Upper Canada was in a dependent and detached position.

In addition to the question of revenue, petitions and resolutions often had different main grievances. Prescott-Grenville, for example, included the most criticism of the constitution; whereas, the Cornwall-Stormont petition possessed the most comments about internal improvements. Of the petitions that considered the unfavourable aspects of certain clauses in the Union Bill, the petition of Brockville-Leeds was the most comprehensive.

Brockville-Leeds maintained that the thirteenth clause, which enacted the no person would be eligible for a seat in the House of Assembly unless he possessed legally lands and tenements of 500 pounds sterling in value, was

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29 Kingston Chronicle, "Prescott-Grenville Resolution", November 22, 1822.

unnecessary because Upper Canada had legislated already a qualification. Moreover, it perpetrated an unnecessary restriction on electors in Upper Canada and, in effect, would have rendered one-quarter of the members sitting in 1822 ineligible.

This clause received more attention among the unionists than did any other single clause. A resolution from the town of Niagara complained that it would alienate the popular branch from all weight and influence. Two other petitions criticized the exorbitant sterling value qualification, but their alternative was anything but democratic. Both the petition from the County of Sandwich and that from the County of Carleton resolved that a 500 pounds qualification was so excessive that it would disqualify a whole section of the people. Both agreed that a 200 pounds qualification would be sufficient because, according to Perth-Carleton petitioners, that amount would secure the independence and respectability of the House of Assembly. The friends of the Union of Kingston-Frontenac were so in favour of the measure that they dismissed completely the question of excessive qualification and left the whole matter up to the discretion of the British parliament.

Again it was principally Brockville-Leeds that attacked the sixteenth clause, which authorized the Governor-

in-Chief to appoint two members of the Executive Council of each province to sit in every Assembly with all the rights and privileges of the representatives of the people, with the exception of voting. The petitioners of Brockville-Leeds claimed that the clause not only would be dangerous to the constitution, but also would have the effect of destroying that necessary equipose which then existed between the "three Estates"[30] by giving to one an opportunity of exercising an undue influence over the other.

Friends of the Union from the town of Niagara feared that the presence of the Executive Councillors in the Assembly would restrain debate and preclude any harmony in the representative body. Petitioners in the County of Sandwich who supported the Union expressed concern that such an innovation would divert too much influence to the Executive. Sympathizers for Union in Kingston dismissed this problem in the same fashion as they had regarding the question of qualification.

Only the Brockville-Leeds petitioners mentioned the eighteenth clause, which provided for the extension of the term of service of the representatives of the people from four to five years. They viewed it both as an abridgement of the elective franchise and as an attempt to diminish the

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30 Kingston Chronicle, "Brockville-Leeds Resolution", November 29, 1822.

people's check over their representatives. Sandwich petitioners did not mention exactly the question of a quinquennial parliament when they criticized the sixth clause which allowed the members of the legislature in 1822 to constitute the Assembly until 1825; rather, they complained that Britain had given the provincial representatives another year's service without the consent of the electorate.

When they had met in Brockville to vote on their resolutions regarding the proposed Union Bill, the petitioners of the County of Leeds lodged a strong criticism against the twenty-second clause, which deprived the House of Assembly of the right of imprisoning for contempt persons not connected with that House of Assembly. The right would not be possessed until a declaratory act would be passed upon the subject to define the rights and privileges of the members of the House of Assembly. The Brockville-Leeds petitioners denounced this clause because it not only represented a great infringement upon the members, but also submitted the House of Assembly to insults for which there could be no redress. Moreover, the clause was intolerable, for it deprived the Assembly of the right of punishing offenders, a power that the most inferior courts possessed.

In the same manner, the Brockville-Leeds petitioners denounced the twenty-seventh clause, which provided for the continuance of salaries or allowances of officers or other

persons in the legislatures until otherwise provided by an act of the parliament of the Canadas, because the clause disposed of public money of the provinces without the consent of the representatives of the people. This stand on the civil list placed the Brockville-Leeds resolutions in opposition with that of the Prescott-Grenville resolutions. Friends who considered the latter resolutions thought that the due maintenance of the honour and dignity of his Majesty's crown and government as a component part of their invaluable constitution demanded a reasonable and prompt appropriation of funds for the support of the civil list.

The Prescott-Grenville petitioners regretted to observe that the civil list had been withheld in Lower Canada because such a situation was intolerable under a proper adherence to the constitution. Declaring themselves on the issue, the friends of Union of Grenville County attributed the perversion of legislative power in Lower Canada to a blind confidence reposed by an inoffensive and unsuspecting people in specious political adventurers, who worked on the uninformed minds of a portion of the Canadian family. The petitioners of Prescott-Grenville claimed that Upper Canada did not have more friendly feelings to the Empire, but had rather a more just conception of their relation in it.

Whenever sentiments of assimilation were expressed in

petitions, they were quite mild. The Cornwall-Stormont petition limited its concern on the subject to the assertion that Union was the only way for the assimilation of the feelings of each province. March petitioners were more elaborate, but just as mild, when they suggested that Union hasten to remove the diversified feelings of the varied population to combine all in a closer political union and strengthen the attachment to the Mother Country. The Kingston-Frontenac petition may have been hinting at assimilation when it asserted the necessity of uniting in 1822, since it would be too difficult in the future. The petitioners of the townships of East Carleton[31] were more candid when they advocated that Union not only would remove the political embarrassments of the last few years, but also would unite eventually the whole population as one happy branch of the great British family. Resolutions of friends of Union in the town of Niagara echoed the theme of the great British family.

Union with the possible sacrifice of full political liberty, was criticized vehemently only by the Brockville-Leeds petition. All other unionist petitions gave the

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31 P.A.C., Series Q, MG 11, Vol. 165, The Petition of the Inhabitants of the Townships comprising the Eastern portion of the County of Carleton in the Province of Upper Canada, pp. 100-101. Henceforth, this petition will be referred to as East Carleton.

question of political liberty only slight notice or dismissed it. The most overt case of Union at all costs was that of the friends of Union of the County of Glengarry, the border county. Among the resolutions considered by the petitions of that county was one advocating Union for the preservation of civil and religious rights and another that England ought not allow prejudice to turn aside the aims of Union.

Present at the meeting of the supporters of Union of Glengarry County was Alexander Chilsom who challenged the two resolutions as being mutually destructive. He, himself, urged a resolution that the laws existing in Upper Canada respecting the representation, qualification of electors, eligibility of members to be returned to the House of Assembly, and the duration of parliament were perfectly satisfactory. His motion was seconded, but lost in the vote. The people present at the meeting passed all the resolutions included the two to which Chislom objected. He alone dissented.

Any general agreement among unionists regarding the economic benefits of Union ceased when regarding which branch of the government was to possess the most power in united Canada. The Upper Canadian separatists had urged a strong Assembly and had complained about the excessive power of the Executive; whereas, the petitions and resolutions of friends of Union divided on the question of wherein

the power ought to exist.

Among the petitions and resolutions that included criticism of clauses in the Union Bill that infringed upon political freedom, only Brockville-Leeds had consistent criticism culminating in a logical conclusion. All the others were willing, although perhaps reluctantly, to sacrifice the power of the Assembly to that of the Executive in order that their economic aims would benefit. The amount of criticism lodged against infringements of political liberty in the Union Bill was a criterion to judge whether the eventual support of a petition or set of resolutions favoured a strong Assembly or a strong Executive. If the support of the latter was consistent and logical, it concluded with a plea for the continued division of Lower Canada and Upper Canada; whereas, if such criticism was sparse, weak or omitted, the petition or set of resolutions tacitly supported a strong Executive.

Among the friends of Union who criticized an infringement of political liberty, but who were not consistent in that criticism may be included the petitioners from the County of Grenville, the town of Niagara, and the County of Sandwich on the far western frontier. Prescott-Grenville noted that one of the guiding principles in the formation of the bill in England was that of "<u>holding inviolate the</u>

privileges of the representative body in Spirit and Form"[32]. In addition these same petitioners urged England to omit any innovations that would cause the composition of the united House of Assembly to differ from that of the House of Commons. These concerns about the House of Assembly, however, were platitudes as will be shown in the discussion regarding the Executive.

Friends of Union from the town of Niagara had two criticisms regarding political liberty and a view of new power for the Assembly. The 500 pounds qualification for electors, it was stated, would cut off the popular branch from all weight or influence. Moreover, the presence of Executive Councillors in the popular branch would not only restrain debate but also cause a lack of harmony between the Assembly and Executive. There was, however, a possibility of great power for the Assembly in a united Canada because it would possess full legislative power in matters like revenue and so the need for future British interference would end.

At the meeting at the Court House in the County of

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32 Kingston Chronicle, "Prescott Grenville Resolutions", November 22, 1822.

Sandwich, in the Western District the supporters of Union criticized the presence of Esecutive Councillors in Assembly as did Niagara, but did so because they claimed such an innovation would render too much influence with the Executive. They considered that the powers of the united legislature would not be great, being mostly confined to fiscal matters, because all laws of a criminal or civil nature had already been made. If the legislature was to be relatively ineffectual, then another branch of the government would have to have power. The petitioners feared more Executive power in the Assembly and at the same time envisioned a weak Assembly in united Canada which would contribute to Executive influence.

Where the Prescott-Grenville, Niagara and Sandwich petitions were partial and inconsistent, the Brockville-Leeds petition was consistent and logical. It concluded its comments with a plea for continued separation rather than a Union with the deprivation of political liberty as represented in some of the clauses of the Union Bill.

Rather than clearly urging a strong Executive branch of government, those petitions which considered the Executive branch in the Union inferred that the Executive would be strong as a result of the weak political powers of the Assembly or that the Executive would be strong because its role would change. The friends of Union in the County of

Sandwich, those in the County of Carleton, and those in the County of Grenville mentioned or inferred certain considerations about the Executive.

According to the petitioners of Sandwich, the united Legislative Assembly would have been an insignificant institution. Since all criminal and civil laws were already made, the Assembly's task was to be mostly a discussion about fiscal problems. Its limitations were to be governed not only from the paucity of its task, but also from a clear definition of its powers. The Sandwich petitioners did not mention where the power was to exist, if it did not exist with the Assembly. It had to exist somewhere, so the petitioners were perhaps assuming it would be with the Executive.

When the petitioners of Perth-Carleton considered the question, they concluded a role for the Executive that was unique among all the petitions. Seeking the strongest possible Executive, they claimed that union was inadequate to assure the power of the Executive. In order to combine thoroughly the interests of both provinces, only the Executive should administer the government.

The Prescott-Grenville petitioners suggested another alternative plan which almost amounted to a federal constitution. With a common control over both provinces, the petitioners suggested a general congress of legislative

authority. They further conceded, however, that the separate provincial legislatures could continue to exist for the purposes of local and municipal usefulness. There was no doubt, however, regarding the branch of most power. Absolutely necessary for the honour and dignity of crown and government was a reasonable and prompt appropriation of funds for the support of the civil list of the executive branch of the proposed congress.

If any address, petition or set of resolutions possessed a comprehensive expression of the Upper Canadian unionist view, it was the address of Robert Nichol, a member of the Legislative Assembly for the District of London, at a meeting held at the Court House in Niagara on December 18, 1822. His purpose was to clarify misrepresentations and misunderstandings regarding the measure of the legislative union of Upper Canada and Lower Canada.

He claimed the revenue problem started during the war from 1812 to 1814 with the United States when it was discovered that Upper Canada had not received any duty for the proportion of new or war duties that were imposed in 1813. He spoke with conviction because he had made the discovery himself in his capacity as chairman of a committee to investigate the revenue and public accounts. After reviewing the revenue problem he advocated Union to free Upper Canada from the selfish, capricious enactments of Lower

Canada.

After explaining how the revenue question resulted in an address to the King and how that address further resulted in the Canada Trade Bill and the Union Bill, the former to present a remedy for the past and the latter to prevent a recurrence of past problems, he proceeded to refute various arguments opposing Union. He countered the concern that a united Assembly would have a preponderance of French members to the detriment of Upper Canadian interests by demonstrating how the Union Bill guarded against such a preponderance. The Upper Canada statute for increasing representatives was left in, but there was no law like it in Lower Canada to be retained. Since the Governor of Lower Canada was empowered to proclaim new counties, those counties would likely appear in English areas. Moreover, both Upper Canada and Lower Canada were limited to sixty members and any increase over that total could only occur when two-thirds of all members were present for the second and third readings of a representation bill.

There was no possibility that Upper Canada would remain a minority for any length of time in the joint legislature. Although it would enter Union with forty members as opposed to Lower Canada's fifty, Nichol reminded his listeners that numerous counties in Upper Canada were increasing in population and would merit another member. In

addition, there was nothing to restrict Upper Canada from accelerating the operation of the law regarding representation by forming new counties.

He dismissed as absurd the fear that Upper Canada would be subjected to French laws. There was absolutely no possibility of French laws because the Legislative Council and the Crown would disallow them if they did get through the Assembly.

Among other objections refuted was the enactment in the Union Bill that extended the Assembly elected in 1820 to 1825 from 1824. Some petitioners had criticized that extension because it was done without the people's consent and because it necessitated an appropriation of funds by an Assembly which the people had elected for four years, not for five. Nichol exhorted those present at the meeting to accept the necessary appropriation of funds, because it had been the almost unanimous request of Upper Canada that the Imperial Parliament should interfere regarding the revenue problem. Since Britain had been benevolent enough to interfere for the benefit of Upper Canada, then that province should be willing to bear a few temporary inconveniences. Moreover, once Union was in effect the necessity of future interference by Great Britain would cease.

For those who claimed that there could be no Union unless the British Act legislating Union was ratified by an

act of the Upper Canada legislature, Nichol reminded them of their colonial status. As a dependent colony, Upper Canada's claim to that power was premature. The province had no right or power to assume the functions of a sovereign and independent state.

John Nichol attempted to counter most of the objections. Two, however, could not be obviated. He admitted that the objections against the clauses respecting the qualification of members and the introduction of Executive Councillors to sit and debate in the Lower House were valid. That validity, however, could never make him "agree to the proposition that because two clauses of upwards of sixty, are objectionable, the whole bill must be bad"[33].

Having refuted what he considered the main objections, Nichol reviewed the advantages that Upper Canada would derive from Union. To him the most important were Upper Canada's freedom from dependence on Lower Canada; Upper Canada's equal voice in raising and appropriating, in a constitutional way, the public revenue, and Upper Canada's immediate improvement of the St. Lawrence River on a large scale.

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33 Kingston Chronicle, "Address by Robert Nichol at meeting held at the Court House, Niagara", December 20, 1822.

Nichol included three advantages that never appeared in any petition. In the event of a future war Upper Canada, if part of the United Canadas, would be relieved from the whole charge of maintaining the wounded and disabled who might suffer in both provinces. Robert Nichol claimed that in the war with United States from 1812 to 1814, Upper Canada received all the blows and suffering; whereas, Lower Canada, enriched by the expenditure of the war, enjoyed her wealth in safety from the protection afforded her by Upper Canada. He accused Lower Canada of pocketing all the revenue including Upper Canada's share. All that remained for the upper province was the barren honour of having fought the battle, while Lower Canada enjoyed all the reward.

Equally as novel as the contrasting roles of the Canadas in the war of 1812 as a cause for Union were the effects envisioned by Nichol from an increased number of representatives in the united House of Assembly. Citing no examples whatsoever, John Nichol claimed that increased representation not only would frustrate "the cabals of intriguing individuals who have wormed themselves into the public situation", but also would lessen "family influence, now so potent at the capital (York)"[34].

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34 Ibid.

Among the English in Lower Canada[35], there were two main divisions, namely, the English in the Eastern Townships of the province of Lower Canada and the English in the Seigneuries. The former group was predominantly agriculturists, while among the latter there were businessmen, government officials and agriculturists. There was no divided opinion regarding the proposed union among the English in the Townships; all supported it. Such unaminity did not exist among the English in the seigneuries. It was in the seigneuries that bureaucratic officialdom, such as Ryland and Sewell, flourished, as did English businessmen, such as, John Richardson, John Neilson, and Neilson's son Samuel. Also in the seigneuries, there were English seigneurs, such as, Charles William Grant and William Henderson, as well as English politicians in the Legislative Assembly, such as, Charles R. Ogden. A division of opinion regarding union occurred among the English in the seigneuries. To a large extent, the English bureaucrats, with the exception of Richardson, divorced themselves from active participation at the meetings held in support of the union; yet their often repeated aim of assimilation was undivided in petitions

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35 Petitions and resolutions from the English in Lower Canada with regard to the Union Bill will be identified as previously explained.

supporting union. Business interests were well represented in Montreal by John Richardson, who chaired the Montreal meeting for the support of Union. At that meeting held on October 23, 1822 in Montreal, Richardson was assisted by James Stuart, who had been one of the members for Montreal in the Legislative Assembly from 1808 to 1820 and who went to England in 1823 as the agent for all Upper and Lower Canadian supporters of Union. Commercial interests were represented at the Quebec meeting by the chairman John Stuart, who in 1821 had been commissioned a chief factor of the Hudson's Bay Company. Also present at that meeting was William Walker 1797-1844, a lawyer who in 1835, was sent to England with John Neilson to present the views of the British Constitution Party in Lower Canada to the British Government. In 1822, however, John Neilson was the foremost English Lower Canadian opponent of the English designs to unite Upper and Lower Canada. Neilson accompanied Louis Joseph Papineau to England in 1823 to present the case against the proposed Union. William Ogden, a member of the Assembly for Three Rivers, was the leader of the English who supported the Union in the House of Assembly. Richardson or Ryland likely served the same purpose in the Council.

The English in the Townships[36] considered themselves to be almost out of the pale of Civil Government. The petitioners from this area claimed that their situation was different from that of any other portion of the British empire. In their petition to England in support of Union, the English in the Townships informed parliament of the reasons for their grievances in 1822. Their petition amounted to an apology for English civil rights.

Since they resided within the province of Lower Canada, the English in the Townships possessed French civil law which they considered a foreign law in a foreign language which they could not comprehend, but had to accept. Moreover, the law courts which administered the French law existed only in seigneurial Lower Canada. The petitioners sought English common law administered in English in courts in the Townships.

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36 P.A.C., Series Q, MG11, Vol. 163, pt. 1, Petition of the Inhabitants of the Townships of: Dunham, Stanbridge, St. Armand, Sutton, Potton, Stansfield, Barnston, Barford, Hereford, Farnham, Brome, Bolton, Hatley, Compton, Clifton, Granby, Shefford, Stakely, Oxford, Ascott, Eaton, Newport, Bury, Hampden, Milton, Roxton, Durham, Melbourne, Windsor, Shipton, Stoke, Dudswell, Simpson, Kinsey, Grantham, Wickham, Wendover, Brompton, and other Townships and places on the South East side of the River St. Lawrence in the Province of Lower Canada, pp. 147-159. Henceforth, this petition will be referred to as Townships.

The claim for civil rights, that is, representation in the Legislative Assembly and possession of English common law, was based on the Proclamation of 1763 and the Quebec Act of 1774. According to the petitioners, the plight of the English in the Townships in 1822 was a mockery of the Proclamation of 1763 which had offered English laws, an assembly and the protection of the Crown to all those who would come to Quebec. The English and later the American Loyalists who came and settled in the Townships found themselves without either English laws or representation in an Assembly in 1822 and since 1774, apparently had been forsaken by the Crown. The petitioners in the Townships claimed the Quebec Act as a reassertion of English civil rights, for it stated that French laws were not to extend to levels to be thereafter granted in free and common soccage, that is, in the Eastern Townships of 1822. They deplored the policy of 1774 and especially the gradual extension of French civil law into the Townships because it forced on to the English a foreign and imperfect system of jurisprudence with no trial by jury and with no rôles of evidence. The Quebec Act estranged a growing population from the British family. Without representation in the House of Assembly and governed by foreign laws, the English in the Townships were concerned about the political and legal system they lived in because that system had a

"tendency to destroy all that distinguished them as belonging to the Great English National Family"[37].

Connected with their legal grievances, the petitioners mentioned the absence of registry offices as one of the most detrimental effects on their economy. According to them, the value of real property was reduced to the lowest point of depreciation by the operation of an obsolete law code involving titles. Since land deeds were not registered in Lower Canada, an investor or purchaser could not have a legal search of a deed in a registry office to determine the ownership and liens on a piece of property. This obscurity involving land titles retarded investment in the purchase and improvement of this sort because the rush was too great. Since new settlers could not get valid deeds to their property, except by an act of the Lower Canadian Legislature, there was a tendency for new English settlers to avoid the Eastern Townships. Together with prohibiting settlement, the absence of registry offices greatly lessened business enterprise because the usual pattern of a land investor was to buy an amount of land, retail part of it immediately to settlers and hold the remaining portion until the new settlement increased the value of the remaining portion. Since the political and legal problems in the

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37 Ibid., p. 149.

Townships precluded settlement, so too did they preclude an influx of investment capital.

Aware of their own inability to change their political and legal position, the petitioners looked to Britain for relief. Britain had to decide about the future of the English in the Lower Canada: "either by uniting the Provinces to hold inducements to the French to become English, or by continuing the separation of hold out inducements to the English in Lower Canada to become French"[38]. To the petitioners, however, that latter alternative was absurd, for there could be no sound reason for rearing up any portion of the Province so as at its maturity to constitute a nation of foreigners or for continuing a system calculated to deter Britains and their descendants from settling upon the waste lands of the Crown.

Attempting to construct a case against the French Canadians, the petitioners warned Britain about the French Canadians who, in the midst of profession of attachment to England, sought to preserve themselves as a separate and distinct people. In fact, if it could ever be determined if separation and distinction were the real motive of the French Canadians in opposing Union, then that motive formed the strongest possible reason for Union.

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38 Ibid., p. 155.

Any economic question of revenue division and the development of the navigation received negligible consideration from the English in the Townships. They agreed with the Upper Canadian unionists and the English in the seigneuries that the Canada Trade Act of 1822 was only temporary, but supported their agreement with reasons concerning the interests of Upper Canada, not their own interests. They sympathized with Upper Canada because it not only lacked a full veto over Lower Canada revenue duties, but also because Upper Canada had no deliberative or initiative voice in enactments regarding legislation. The English in Townships supported Upper Canada because they were unable to support anything favourable to the French Canadian, not because they feared for Upper Canada revenue. Further, it had been "extreme impolicy to leave the only source of revenue in the hands of a people like French Canadians, anti-commercial in principle and adverse to assimilation with their British fellow subjects"[39].

Through Union, the English in Townships thought they could escape their minority position. Union was the "only effectual means of terminating difficulties and troubles permanently" as well as "the only way to produce a

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39 Ibid., p. 156.

gradual assimilation of British feeling among the inhabitants"[40].

Although the petitions from the English in the Townships did not consider the English in the Seigneuries, except to point out that they were two different and distinct groups, the opposite was not true. The supporters of Union who drew up the St. Armand resolutions[41] noted that the Townships were debarred from local representation and civil rights. In the Quebec petition[42], the petitioners mentioned the absence of a law for representatives from Townships. The Three Rivers petition[43] complained about the lack of registry office of deeds and mortgages by which the creditor could eliminate the risk in lending money.

In their petitions, the English in the Townships concentrated on political, legal and economic issues. Politically, they wanted representatives in the Assembly to advance legislation to establish English common law and

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40 Ibid., p. 154.

41 Quebec Gazette, "Resolutions of the Meeting of the Inhabitants of St. Armand", November 18, 1822. Henceforth, these resolutions will be referred to as St. Armand.

42 P.A.C., Series Q, MG 11, Vol. 161, Petition of the City and District of Quebec, pp. 333-335. Henceforth this petition will be referred to as Quebec.

43 P.A.C., Series Q, MG 11, Vol. 165, The Petition of the Inhabitants residing in the Town and District of Three Rivers in the Province of Lower Canada, pp. 95-98. Henceforth, this petition will be referred to as Three Rivers

registry offices. There was little liaison between the English in the Townships and those in the Seigneuries. The latter had political representation; the former did not. The latter sought economic legislation affecting the development of the St. Lawrence River system; the former sought economic legislation to establish more investment in land development. The latter lived within the Canadian society and its laws; the former lived only within its laws. The English in the Seigneuries had a much more difficult task to persevere themselves than did the English in the Townships. The two groups sought to use the same means, namely, Union and assimilation of the Canadians, to achieve ultimately different ends, for one group was urban and commercial; whereas, the other was rural and agarian. Had they been successful in 1822 to achieve Union, they would have divided within time over the question of revenue expenditure.

One of the earliest resumes of the proposed Union Bill that the English in the Seigneuries read appeared in the Quebec Gazette on July 4, 1822. This paper had recently been sold by John Neilson to his son, Samuel Neilson, whose announcement as His Majesty's Printer appeared in the paper on July 25, 1822. Samuel Neilson's paper carried the discussions on the Union Bill throughout the summer and when it was withdrawn until the next session, he thought, "it

unnecessary now that it is dropped for the present to take up the subject"[44]. In the same editorial, however, he suggested a criterion for discussion about the proposed Union. He urged all not to misrepresent opposition news; to beware of suspicion; to remember that the British government only sought the welfare of Lower Canada; to judge the benefit and injury of union, and to conclude via one's own common sense and not by those running about the country spreading prejudice.

As editor, however, Samuel Neilson could not refrain. He avoided direct discussion, but engaged in indirect comments, such as, his refutation of the charge of precipitancy against the King's minister, namely, Wilmot. Governor Dalhousie attempted to avoid any political discussion on the Union in the Quebec Gazette, as the government paper, but Neilson ignored the Governor's wishes by convincing himself that "surely the Governor never intended to exclude a fair, candid and temperate expression"[45]. Although he did maintain moderation, he made his views known by including lengthy coverage of meetings in Lower Canada supporting the Union and sparse coverage of petitions and meeting supporting the status quo.

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44 Quebec Gazette, September 19, 1822.

45 Ibid., October 7, 1822.

An excellent example of Neilson's careful selection was the detail in his paper about the Montreal meeting of the friends of reunion, October 16, 1822. John Richardson, the leader of the English party, a member of the Legislative Council as well as the Executive Council, and a Montreal businessman chaired that meeting. In his remarks to the meeting, Richardson explained why he promoted reunion. His first remark showed he still thought Lower Canada could be English, for he informed his audience that "upon the decision to unite or not might depend whether inducement will be held out to them (the posterity of the English) to become foreigners in a British land or for inhabitants of foreign origin to become British"[46].

Regarding the opposition to the Union Bill in the House of Commons, Richardson repeated what Samuel Neilson had earlier asserted in an editorial. Neilson had written that the leaders in opposition were not against the bill's policy or justice, but rather because it involved colonial rights per se. Richardson described the tactic of the opposition even better when he told the meeting that the opposition, led by James Mackintosh, who was an opponent of

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46 Ibid., October 24, 1822.

the government, opposed the bill as a government measure; whereas, if it had been an opposition measure, he would have supported it.

In his address, Richardson's nativism surpassed his commercial interests. His sole commercial comment dismissed any advantage of the Canada Trade Act because arbitration disputes over the amount of revenue to be divided would be endless. As with the English in the Townships, he was not thinking of Upper Canada interests when he expressed regret about Upper Canada's lack in an equal possession of the port of Quebec, but rather the fact that he, as an English Lower Canadian, did not possess control of that port even though his government did. By emphasizing Upper Canada's right to the port, he stood a better chance of ultimately sharing in the control himself or through the English in Lower Canada.

He had not changed his mind about the French Canadians since 1791, for he still considered them as an anti-commercial group who always caused problems in the Assembly because they always voted on issues according to origin. In addition, they opposed all tendency to introduce manners, policy and institutions of England; they "wished to transmit to their posterity the prejudices and abuses of their fathers". Convinced that Union had to prevail, the leader of the English party urged the members

"to show good fellowship to our opponents and forgetting all that has passed, embrace them as brothers of the Great Britain Family"[47].

James Stuart, who later took the petitions in favour of Union to England, echoed Richardson's sentiments about the inadequacy of the Canada Trade Act and the Canadians. He too, however, had to resort to arguments involving Upper Canada to support the inadequacy. Union would afford free ingress to Upper Canada. In a short time Upper Canada would have to use violence to obtain her just claims. Time nor circumstances would never end Upper Canada's dependence on Lower Canada. For Lower Canada he justified Union so that natural prejudices could be extirpated and that the power of government could be more like the United States.

The theme of assimilation was also present in an address delivered before the meeting at Quebec in the Union Hotel by supporters of the Union in that town. It was much more moderate than that expressed by Richardson and Stuart. At the Quebec meeting, business interests were stressed rather than nativist interest. The speaker's assessment that the "French Canadian may not be anti-commercial, but they do not pass commercial laws" was far more accurate than Richardson's judgment. The main concern

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47 Ibid.

of the speaker was the slow development of the St. Lawrence River especially when New York State was building a canal which could threaten the export-import business of Quebec[48].

Another speaker at that meeting claimed that the trifling enactments on the Statutes Book of Lower Canada proved that the French Canadians were not governing. He urged that the Union Bill incorporate no new laws regarding religion and omit any proscription of the French language[49].

All the petitions considered from the English in the Seigneuries agreed that Union was advantageous. All included, in varying degrees, that assimilation of the Canadians would be a desirable result of Union. The Montreal petition[50] was the most extreme in this desire, for it contended that the situation and past experience of the English in Montreal caused the English to urge that union and the foreign character of a great part of the population of Lower Canada and its inimical disposition to everything British. The Quebec petitioners in favour of Union considered Union as a great measure because it would tend

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48 Quebec Gazette, December 2, 1822.

49 Ibid.

50 P.A.C., Series Q, MG 11, Vol. 166, pt. 1, Petition of the Inhabitants of the City and County of Montreal in the Province of Lower Canada, pp. 47-62. Henceforth, this petition will be referred to as Montreal.

gradually to assimilate the whole Population in opinions, habits, and feelings. The Three Rivers petition omitted direct reference to assimilation, but did mention that the present organization of the Province of Lower Canada and that of its House of Assembly were of a nature and composition too heterogeneous ever to assimilate its population in manners, customs, language, or feeling, but that Union likely could accomplish assimilation. Similarly the petition from the borough of William Henry omitted any reference to assimilation; in fact, the petitioners sought only a fair and equitable portion of British feeling and interest in the House of Assembly. The petitioners of this borough, however, would not have opposed assimilation because they thought that their opportunity to obtain the same rights and privileges was ebbing rapidly, especially because British emigrants from Europe located in the United States rather than in Lower Canada.

All the petitions, except that of St. Armand, considered the question of revenue. The Montreal petitioners claimed that if the provinces were not united, no satisfactory system could ever be found to determine the amount due each province. The Montreal petition illustrated a tendency among the Lower Canada English that Archibald McLean had mentioned. In its consideration of the revenue question, the

petition noted that the proportion of duties allowed to Upper Canada by the Canada Trade Act of 1822 was greater than Upper Canada was entitled to, that is, there were not sufficient dutiable articles imported of Quebec for Upper Canada, for Upper Canada to merit one-fifth of the total revenue. The English in Lower Canada were not prepared to yield any part they could hold.

According to the friends of Union in the borough of William Henry, Union would at last enable Upper Canada to get a fair and equitable portion of the revenue. The Three Rivers petitioners claimed that Union was needed because of the utter impracticability of devising any adequate means for an equitable subdivision and participation of revenue. In the Quebec petition, the petitioners claimed that revenue just could not be divided amicably unless there was an union to preclude division of revenue.

All of the petitions from the English in the Seigneuries, except that of St. Armand, pleaded the case of Upper Canada as a reason for Union. The Quebec City petitioners pointed out not only that division placed the export trade of Upper Canada at the mercy of Lower Canada, but also that such a situation might divert Upper Canada trade to the United States with the ultimate effect that Upper Canada would drift away from Britain. Equally concerned about the diversion of Upper Canada trade of the

United States were the petitioners of Three Rivers, as well as those of Montreal. Montreal petitioners added that Upper Canada really had no permanent port so that the inhabitants of Upper Canada could have neither free ingress into, nor egress from their country, except insofar as may be permitted by the government of Lower Canada.

Their concern for Upper Canada was only a means to improve their own situation because they were aware that the tendency of Upper Canada trade to go to United States increased as Lower Canada remained French. Unless the French could be controlled the Montreal English businessmen feared that they would lose not only political control, but also their livelihood because Upper Canada would increase its trade via United States. The English in Montreal had nothing to offer the Upper Canadian and they had no proof that assimilation would really result from Union. Any petitions from the English Townships or Seigneuries that included Upper Canada's case revealed an inadequate case.

As the Montreal petitioners sympathized with the Upper Canada position, they also did so with that of the English in the Townships, for whom they credited a sacred claim upon the British government for protection against the painful and humiliating prospect, that their posterity might be doomed to acquire the language and

assume the manners and character of a foreign people. The exact same claim was repeated by the petitioners of St. Armand who also regretted that the Townships lacked local representatives and civil rights. Quebec petitioners regretted that there was no law for representatives from Townships and no law for a Registry of Lands and Mortgages in all of Lower Canada. Friends of Union at Three Rivers thought that the Townships had been neglected by House of Assembly. They too regretted the lack of a registry office of deeds and mortgages by which the creditor could be made safe in lending his money. The concern of the English in the Seigneuries for the English in the Townships was not genuine, but rather, like their concern for the English in Upper Canada, another means to further their cause of Union.

All the English in the Seigneuries, who supported the Union, denounced the Constitution of 1791. To the petitioners of the borough of William Henry, it was a most injudicious and injurious system that had caused innumerable grievances as to oppress the King's subjects. As far as the Quebec petitioners were concerned, the division had failed completely because instead of concurring in measures to assimilate themselves, the majority of the legislature took the opposite course to stay in power. They placed the entire failure for assimilation on the division in 1791. Friends of Union in Three Rivers referred to the Constitution

of 1791 as the cause of all British woes in the House of Assembly in Lower Canada. The Montreal petitioners considered the division by Britain as one of the greatest examples of generosity offered to the Canadians who, by 1822, had not reciprocated those kindnesses by becoming more British. They did, however, criticize the Crown for not assuring a fit and reasonable influence of British feelings and principles in the colonial legislature. The petitioners in Lower Canada for Union all sought to alter the constitution of 1791 because it had created a political structure that they could not control.

They, themselves, could not alter that political structure, so they sought the intervention of Britain. Britain was the superior power that the William Henry Petition referred to that could stop the friction in Lower Canada. The whole matter of the proposed Union Bill was considered by the Quebec City petitioners as a result of an inquiry the British government had made into the administration of the Canadas. The result of that inquiry was the decision that some change had to be made in the constitution of the Canadas. Since the revenue problem, according to the Three Rivers petition, would result in renewed conflicts between Upper Canada and Lower Canada, it was imperative that Britain take preventive action and unite them to avoid the conflict. Quite different from the

preventive purpose for British interferences was the proposal in the Montreal petition that amounted to a challenge to Britain prestige; for it asked Britain:

> . . . whether a system of Government which had had such effects, and which in its ulterior consequences must expose Great Britain to the mortification and disgrace of having, at immense expense, reared to the maturity of independence a foreign conquered colony, to become the ally of a foreign nation and the scourge to its native subjects and their descendants ought to be persisted in?[51]

The Assembly of Lower Canada was criticized severely by the English in Lower Canada. The petitioners of Quebec favouring Union complained that the Assembly had become narrow, inward and ignored general development, especially the St. Lawrence River. At their meeting, a speaker told the Quebec friends of Union that the French Canadians had failed to govern and referred to the lack of important legislature passed from 1791 to 1822. According to the Montreal petition, the primary cause of political problems in Lower Canada was the French-Canadian control of the Assembly. To prove its charge of legislative incompentcy against the Canadians, the friends of Union in Montreal claimed the French were under the influence of a foreign people, that they lacked the requisite qualifications to discharge their function; that they managed to exclude most English candidates; that they refused to consider any

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51 Ibid., p. 54.

measure regarding assimilation or commercial property.

As a result of the actions of the Assembly, the Executive was paralyzed and inefficient, the extension of British settlement impeded, British immigration was almost prevented and all commercial enterprise and improvement had been obstructed. There was only one escape - Union.

Of all the reasons for Union expressed by the English petitioners in the Seigneuries, the social reason, namely, assimilation, was the strongest. There was great concern that the possibility of asserting English culture dominance was ebbing rapidly.

The greatest citadel of Canadian interests was the Assembly, wherein the Canadians could protect their own interests and thwart the interests of the English. As a result, the Assembly and the French Canadians in it received considerable attention in the petitions favouring Union. The attack on the Assembly illustrated the political problems of the English in Lower Canada. As a minority, they were almost totally excluded from political participation in the Assembly.

As expressed in the petitions supporting Union, the economic reasons as a cause of Union were quite weak because they rarely pleaded the case for Lower Canada, but rather for Upper Canada. The government of English in the Seigneuries would receive four-fifths of the revenue collected

at Quebec. In addition, their government controlled the port of Quebec. Moreover, the Canada Trade Act of 1822 had established not only a division of revenue, but also a means of resolving disputes as well as a method of improving the navigation of the St. Lawrence River. The fear that Upper Canadians trade would be diverted to New York as a result of the New York canal from the Hudson River to Lake Erie was certainly true, but rather than admitting that they feared a loss in their own businesses, the Montreal petitioners claimed that the trade diversion would lessen Upper Canada's loyalty and allegiance to Britain. Generally speaking, the denunciation of the benefits accruing from the Canada Trade Act, even before it commenced to operate, showed that possibly the English in the Seigneuries did not want it to work.

There were few English who opposed Union during the latter part of 1822 when the petitions were being prepared. William Henderson was one of them and he acted as a secretary at the constitutional meeting of the inhabitants of the town and District of Three Rivers against the Union held on December 2, 1822 in Three Rivers. Another English Lower Canadian who had formerly owned the Quebec Gazette and who in 1822 was a representative from Quebec in the House of Assembly of Lower Canada became a foremost opponent of any attempt to unite the provinces of Upper

Canada and Lower Canada, namely, John Neilson.

John Neilson was fully aware of the background relating to plan to unite the two provinces. He believed that it had existed, with certain modifications, since the time of Chief Justice William Smith. It was strongly asserted again towards the end of the Craig administration and then again from about 1819 to 1822. Neilson claimed that the true end of the principal English proponents in Lower Canada of the plan "is to assure themselves of the mastery in the country, and to defeat what the Constitution actually gave to the majority of the inhabitants". He assured Papineau "we have nothing great to fear if we remain firm, attached to our duties, to our rights, to our country and united between ourselves"[52]. He wondered how Britain could so threaten the liberty of the Lower Canadians by attempting to "deprive them of everything we have in the world without giving any warning"[53].

Since his son, Samuel, was an advocate of Union, John Neilson informed Papineau that the views of the union that appeared in the Quebec Gazette were not his, but those

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52 P.A.C., MG 24, Vol. 15, Neilson Collection, John Neilson to Papineau, June 22, 1822, p. 5.

53 Ibid., p. 6.

of his son. If it had been himself "I would have spoken otherwise about it", but since the paper belonged to his son, John Neilson, "did not believe he had any obligation to become involved in the editorials"[54].

Whatever Neilson's sources were, they were accurate. He knew on June 22, 1822 that the British ministers of government had decided on the reunion of the two provinces and that a bill had been drafted. In addition, he informed Papineau what the ministers also thought to be correct, namely, that Edward Ellice had convinced the Opposition to let the bill pass. Neilson considered Ellice to be the agent of John Richardson[55].

Throughout November and December, he communicated with the separatists in Upper Canada, assisted Papineau in planning the itinerary for the mission to England to oppose the Union, and attempted to solve the many difficulties involving the cost of the mission to Great Britain. He encouraged Papineau on whom so much depended:

> It is necessary that you remain firm and public opinion will do the rest. Nothing in the world must sway you now. Avoid everything that might

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54 Ibid.

55 Ibid., p. 1.

> show the least discouragement . . . for the good of the country[56].

Aware of the great service Papineau could do for Canada, Neilson, himself, would also go to England "only if I am able to persuade myself that I would be able to render some service to the Country"[57].

In January 1823, Lieutenant-Governor Maitland of Upper Canada requested in his speech from the Throne that both the Legislative Council and the Legislative Assembly consider the proposed Union of the Canadas. Maitland had waited until January 15, 1823, the latest period admitted by the constitution to call the provincial parliament to inform the legislature that the one-fifth portion of the duty owing to Upper Canada, that the Canada Trade Act designated to be collected at Quebec, had been received. In case any further evidence was needed to illustrate Maitland's approval of the continued division of the provinces supplemented by the recent measures implemented by the Canada Trade Act of 1822, he informed the legislature that "the Commissioner (Robinson) appointed by me on this

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56 Ibid., Neilson to Papineau, December 5, 1822, p. 54.

57 Ibid., Neilson to Papineau, December 14, 1822, p. 61.

occasion in compliance with your joint recommendation has acquitted himself entirely to my satisfaction"[58].

Robert Nichol, member of the Legislative Assembly for the District of London, moved on February 6, 1823 "that so much of the Lieutenant-Governor's Speech as relates to the proposed Union of the Two Provinces be referred to the Committee of the Whole on the State of the Province, and that the House resolve itself into a Committee of the Whole for that purpose"[59]. Six days later, Walter F. Gates, the unionist who had chaired the meeting of the friends to the reunion held at Prescott in the County of Grenville on November 9, 1822, presented a report on the Nichol's motion. That same day, Jones of Grenville, moved a motion that Nichol of the District of London, McLean of Stormont, Hagerman of Kingston, Baldwin of York, McDonnell of Glengarry, Willson of Wentworth, Jones of Grenville, Morris of Carleton, van Koughnett of Stormont, Ruttan of Haldimand and Hamilton of Wentworth, be a committee to consider Gates' report. McLean's amendment that

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58 Journals of the Legislative Council of Upper Canada 1823, Ontario Archives Report II, 1915, p. 76.

59 Journals of the House of Assembly of Upper Canada 1823, p. 145.

van Koughnett and Morris be expunged from the committee and replaced by Gordon of Sandwich and Wilmot of Prince Edward, was carried by a majority of one. A week later the committee reported to the House of Assembly.

Chairman of the committee, Gates, reported the first resolution on February 19, 1823:

> That it is the opinion of this House that the consideration of the Union Bill in the Imperial Parliament was postponed for the purpose of ascertaining the sense of His Majesty's Canadian Subjects on the great and important change[60].

Of the thirty-three members who voted, nineteen supported the resolution and fourteen opposed it. Among those who supported it were: Archibald McLean of Stormont, James Gordon of Sandwich, Thomas Clark of Stemford, John Wilson of Wentworth, Paul Peterson of Prince Edward, George Hamilton of Wentworth, Warren Baldwin of York, Henry Ruttan of Haldimand, Christopher Hagerman of Kingston, James Wilmot of Prince Edward, and Jones of Grenville. Among those who opposed the resolution were: Jonas Jones of Brockville, Robert Nichol of the District of London, W. Randall of Lincoln, Walter F. Gates of Grenville, James Crooks of Flamboro West, M. Burwell of Port Talbot, W. Kerr of Lincoln, Philip van Koughnett of Stormont, and Alexander McDonnell of Glengarry.

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60 Ibid., p. 176.

Following the vote on the first resolution, Gates read the second resolution:

> That the present Representatives of the People do not feel themselves justified in expressing the opinion of their Constituents on a matter so materially affecting the Constitution of the Country, having been elected previously to the contemplation of so great a change; and do not feel themselves called in their representative capacity to express any opinion, the great body of people having themselves made known their sense by petition . . .[61].

The vote on the second resolution remained the same except that one content went over to the non-contents.

So disappointed with the result was Jonas Jones of Leeds that the next day, February 20, 1823 he gave notice that he intended to move a resolution on the following Monday "for expunging from the Journals of this House the Resolutions adopted yesterday, on the subject of the proposed Union and to move others"[62]. Only three members, namely, Walter F. Gates of Grenville, W. Randall of Lincoln and W. Kerr of Lincoln, supported Jonas Jones of Brockville when the House voted on his motion on February 24, 1823. Eighteen opposed the Jones motion.

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61 Ibid., p. 177.

62 Ibid., p. 181.

One of the signs that pointed to the eventual decision of the House was Archibald McLean's successful amendment to Jones of Grenville's motion of February 11, 1823. McLean, a leading Upper Canadian separatist was able to replace van Koughnett and Morris, two members who later opposed both resolutions passed by the House, by James Gordon of Sandwich and James Wilmot of Prince Edward, two members who later supported both resolutions. Gordon did not vote according to the petition of his constituency which favoured Union. Possibly McLean was aware of the division between Gordon and the unionists in Sandwich and sought to place him on the committee that would consider the bill. It was also quite possible that McLean knew the view that van Koughnett would express in the committee because McLean and van Koughnett both represented Stormont County.

Another observation may be obtained from the original motion which established the committee. Walter F. Gates of Grenville who reported the resolutions had been chairman of an unionist petition meeting at Prescott. Jones of Grenville and Gates were from the same constituency and if Jones had supported Union he would have attempted to get more unionists on the committee. Jones did include Robert Nichol, a leading Upper Canadian unionist from the District of London, but countered Nichol's influence by including Archibald McLean, a leading Upper Canada separatist from

Stormont County. Jones included van Koughnett and Morris. The latter was a probable unionist because he had been secretary of the meeting at Brockville which had prepared the unionist petition for the County of Leeds. Any influence of van Koughnett and Morris, however, was offset by the inclusion of Willson and Hamilton, both from Wentworth County, a separatist county. The two members from Wentworth voted according to the petition from their county. In addition, Jones of Grenville included himself on the committee to counter the influence of Gates. Among the four others on the committee, Henry Rattan of Haldimand was a separatist, for he had delivered a speech opposing Union before a meeting called at Hamilton in the District of Newcastle to consider the question of Union. Warren Baldwin, a member for York, voted for both resolutions brought in by the committee. By so doing, he followed the opinion of the petition from York concerning Union. In the actual vote on the resolutions of the committee, Hagerman of Kingston and McDonell of Glengarry took opposite sides with the former supporting and the latter opposing. It would appear then that there was a majority of two separatists on the committee, namely, Rattan and Baldwin. Had McLean's amendment not been successful, there would have been a majority of two unionists.

There was a total of thirty-three votes on the

resolutions. Seven members were either absent or abstained. Had the Speaker of the House, Livius P. Sherwood voted, he would have voted probably for the resolutions. Although he had been chairman of the meeting of the friends of Union in Leeds, the petition that resulted from the meeting concluded that union ought not occur if too many liberties were sacrificed. William Allan of York would have been among the contents in the votes on the resolution. Since the inhabitants of Kingston had submitted a separatist and an unionist petition, the view of John Macaulay, a member for Kingston whose vote was not included, could not be determined.

The vote on Jonas Jones' motions to expunge the resolutions from the Journals reduced the unionist vote to four, namely, Jonas Jones, Walter F. Gates, W. Randall and W. Kerr; whereas the separatist vote held firm at eighteen. Jonas Jones emerged as the strongest advocate of Union in the Upper Canadian Assembly. A probable cause for his strong support of Union was the anticipation of another revenue division impasse. He had been one of the Upper Canadian commissioners during the futile revenue negotiations with Lower Canada in 1819.

The Legislative Council of Upper Canada considered the question of Union as important as did the House of Assembly, for like the Assembly, the Council resolved itself

into a Committee of the Whole to consider the projected Union. As a result of those considerations the Council voted to send an address to the Crown. The address was more of a testimonial to the administration of Lieutenant-Governor Maitland than any view of the Council on Union. In fact, the Councillors did not feel themselves called upon to pronounce any opinion on the contemplated change concerning the general policy of which they are unable to decide. They preferred to avoid the issue by placing their "perfect reliance on the wisdom and justice of the Imperial Parliament"[63]. The Constitution of 1791 supplemented by the Canada Trade Act of 1822 provided for the best interests of Upper Canada, according to the Legislative Council.

Maitland welcomed the view of his Council and concurred completely in its decision. He agreed that "the facts you (the Council) attest: the wilderness converted into a populous country, the active operation of your free and happy Constitution . . . all unite as you rightly make the application to show the reasonableness and propriety of your reposing the most implicit confidence on the wisdom and justice of His Majesty's Councils"[64].

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63 Journals of the Legislature Council of Upper Canada 1823, op. cit., p. 140.

64 Ibid., p. 146.

Governor-in-Chief Dalhousie of Lower Canada approached the question of Union with a far greater sense of urgency than did Lieutenant-Governor Maitland of Upper Canada. Dalhousie relied chiefly on the Legislative Councillors of Lower Canada to impress upon Britain the necessity of Union. In his speech from the throne on January 11, 1823 to the Legislative Council and the Speaker of the House of Assembly, Joseph Remy Vallieres de St. Real, Dalhousie urged both the Council and the Assembly to give their early attention to a subject of such general importance. He was convinced:

> that every Member of this Legislature must regret that the progress of the public interests for some years passed has been so materially interrupted. I will not therefore dwell upon past events, the remedy lies in your hands, and to you I will leave it, with my most earnest recommendation that you will seriously consider the incalcuable injuries which have been and must continue to be accumulated on the Province, while the Executive Branch of the Constitution remains disabled from exercising its just and legitimate and most useful power[65].

Union for Dalhousie was a means to strengthen the Executive and weaken the Assembly. Later, on the same day, the Speaker of the House reported to the Assembly that "he had,

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65 Journal of the House of Assembly of Lower Canada, Vol. XXXII, 1823, p. 13.

to prevent mistakes, obtained a copy"[66] of Dalhousie's speech which was then read to the Assembly.

Pursuant to Dalhousie's request, committee chairman, Denis B. Viger, submitted to the Assembly the Report of the Committee on the Address of the Union of the Legislatures which concluded that:

> . . . we (the members of the Legislative Assembly) . . . entreat your Majesty . . . to be pleased to avert from this Province a measure which has excited among us such strong alarm, and which appears to us adverse to the inseparable interests of Your Majesty's Government and of the people of this Province[67].

During the second reading of the report, Charles Richard Ogden, one of the Burgess representing the Borough of Three Rivers moved an amendment to Viger's report. Ogden's amendment, seconded by Jacob Oldham, a member for Effingham, proposed to replace Viger's report with another report which considered the "Legislative Union of the Canadas . . . as the result of a liberal and enlightened policy to this favoured portion of Your Majesty's Dominions"[68]. Standing in the Legislative Assembly of Lower

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66 Ibid., p. 12.

67 Ibid., p. 31.

68 Ibid., p. 34.

Canada, Ogden informed the members present that:

> As adopted Members of the Great British Family . . . Your Majesty's Canadian Subjects can have no interest foreign to those of Your Majesty's Empire, in feeling but those of fellowship for their fellow Subjects and consequently no aversion to assimilate themselves in language, in habits and in character with the great mass of the nation of which they are a dependency, and for the commonwealth, to unite in counsel and act in concert with the Sister Province of Upper Canada[69].

Ogden's other points were a reiteration of the petitions of the English in Lower Canada. John Neilson had left for England to oppose Union there, so there was no English Canadian remaining in the Legislative Assembly of Lower Canada to counter the remarks made by Ogden.

The Speaker of the House, who had been nominated by Ogden, declined receiving the amendment because "it was in direct opposition to the Resolutions taken by this House on Tuesday . . . and it tended to annul them"[70]. Ogden appealed the Speaker's decision, but the House of Assembly upheld it in a vote of thirty-one to three. The three were, Ogden, Oldham, and George Garden, one of the members from the West Ward of Montreal. Among the majority there were two members who were likely English, namely, Huges Heney who was one of

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69 Ibid.

70 Ibid., p. 36.

the members from the East Ward of Montreal and John Davidson, a member for Buckinghamshire.

Fourteen members of the Assembly were either absent that day or abstained in the voting. Of these the following were likely English: Robert Jones, Richelieu; Michael O'Sullivan, Huntingdon; Thomas Thain, East Ward, Montreal; Andrew Stuart, Upper Town, Quebec; and James McCallum, Lower Town, Quebec. John Neilson, a member from Quebec was in England. Considering these six along with the two English who voted with the Canadian majority and the three who opposed the Canadian majority, there was a total of eleven English in the Assembly. Of that eleven, there were three hard-core English in the Assembly and among those three, Charles Richard Ogden was the leader.

Pursuant to Dalhousie's request, James Irwine presented to the Legislative Council on January 22, 1823, the report from the Committee of the Whole House appointed to take into consideration "such part of His Excellency the Governor in Chief's Speech as relates to the Union of the two Legislatures of Upper and Lower Canada"[71]. The resolutions submitted by Irwine praised the constitution of

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71 Journals of the Legislative Council of Lower Canada 1823, p. 24.

1791 declared:

> . . . that the Union of the two Legislatures will have a direct tendency to weaken and embarrass the administration of His Majesty's government and ultimately create discontent in the minds of His Majesty's Subjects in this Colony[72].

During the second reading of the address to the Crown which incorporated the resolutions, a Legislative Councillor proposed to amend the address that it would be in complete sympathy with Union. The amendment condemned the constitution of 1791 because it tended to produce a diverging instead of a converging effect upon the different people composing its inhabitants. After including all the grievances of the English in Lower Canada in addition to a reference how the Romans successfully governed their colonies, the amendment concluded:

> that Canada not be made an exception to all the rules and lessons of human experience, after a proof of sixty years of the deleterious effects of a departure from the undoubted good policy of national consolidation[73].

The amendment was voted down and the vote was taken on Irwine's address opposing Union. Those who voted in favour of the address were: the Catholic Bishop Plessis, Chief Justice Jonathan Sewell, A.L. Duchesnay, John Caldwell,

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72 Ibid.

73 Ibid., p. 27.

James Cuthbert, Pierre Dominic Debartch, Oliver Perrault, Charles DeSalaberry, T.P.J. Tashereau, L.R.C. DeLery, Louis Turgeon, Louis Gugy, Louis DeSalaberry and Thomas Coffin[74]. Those who voted against the address were: John Richardson, Herman W. Ryland, Charles W. Grant, James Irwine, Roderick McKenzie and William B. Felton. The six dissentients, in fact, had a protest to the vote entered into the Journals which repeated the financial, social, military and commercial advantages of Union[75].

Of the English that supported the address against the Union, the most significant voter was Jonathan Sewell, Chief Justice of Lower Canada and Speaker of the Legislative Council. For years, Sewell had sought to thwart the Canadian interests and when his opportunity came, he acted in exactly the opposite way. Actually, however, he had forsaken Union for a federation of all the British provinces in North America. John Caldwell, Receiver-General of Lower Canada, had been one of Wilmot's consultants regarding the Union Bill. Sewell, Caldwell, Cuthbert and Coffin were the four English who opposed the Union Bill.

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74 P.A.C., Series Q, MG11, Vol. 333, pt. 1, p. 62.

75 Journals of the Legislative Council of Lower Canada 1823, p. 28.

John Richardson, the leader of the English party, led the protest against the vote on the address. Ryland, a strong English nativist, supported Richardson to the end. Charles W. Grant, the Baron de Longueil and also a former member of the committee of Three Rivers to prepare a petition favouring Union, joined the dissentients. John Irwine, Roderick McKenzie and Felton had not apparently participated in the petitions, but they did join the hard core who refused to change.

The Legislative Council had failed to implement Dalhousie's wish for a strong Executive. His regret was apparent in his curt reply to the Legislative Council:

> In compliance with your desire, I shall forward your Address, to be laid at the foot of the Throne[76].

There were thirty-one members in the Legislative Council of Lower Canada in 1822. Of those thirty-one, nineteen were likely English, namely, Jonathan Sewell, Right Reverend Jacob, Lord Bishop of Quebec, G. Pownall, James Monk, William Osgoode, J. Johnston, John Hale, John Richardson, John Caldwell, Herman W. Ryland, James Cuthbert, Charles W. Grant, William McGillvray, James Irwine, Michael Henry Perceval, William Burns, Thomas Coffin, Roderick McKenzie and William B. Felton. Of those nineteen, ten were present

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76 Ibid., p. 31.

for the vote on the resolutions dealing with the Union Bill on January 20, 1823. Of those ten, four supported the address against Union and six opposed the address against Union. Of those six, there were two strong advocates of Union, namely, Richardson and Ryland. Richardson represented the urban commercial group and Ryland the bureaucratic, nativist group. Of these two men, it was Ryland who had sought Union for the longest time and with the most dogged persistence.

Something had happened to Richardson's control over the English party. The English in the Legislative Council had been in a good position with James Irwine as chairman of the committee to consider the question of Union. Irwine, however, lost control of that committee and was forced to offer resolutions to the Council that he himself opposed in the open vote. Moreover, nine of the other English members absented themselves on the day of the vote. Three of those eight were beyond Richardson's influence. James Monk was in Florence, Italy resting after his labours on the Canada Government and Trade Bill of 1822. William Osgoode, who also advised Wilmot on that bill, had been absent from Lower Canada since 1807. William McGillivray was in England where he had remained after his participation in the negotiations that merged the North West Company and the Hudson Bay Company. Apparently,

therefore, there were six English absent, namely, Right Reverend Jacob Mountain, G. Pownall, J. Johnston, Michael Henry Perceval, John Hale and William Burns. Had those six been present and voted with the Richardson-Ryland group, there still would have been only twelve against the address against Union and still fourteen in favour of it. It was possible also that if those six had been present, four of the six would have voted as Sewell and Caldwell did.

Had Richardson been able to hold the English to a straight party on the day of the vote, then the result would have been ten to ten with Sewell, Caldwell, Cuthbert and Coffin voting with the Richardson-Ryland group. A deadlock might have forced the vote to be carried over to another day. If Richardson could have had all the English members present for the second vote he would have had sixteen votes because Monk, Osgoode and McGillvray were not in Lower Canada. The most the Canadians could have obtained was twelve, the total number of French Canadians in the Legislative Council. The greatest majority, therefore, that Richardson could ever obtain, was four.

For Dalhousie to place his hopes on a majority of four was politically dangerous. A greater error on Dalhousie's part, however, was his remissness in not filling the vacancies on the Council caused by Osgoode, Monk and perhaps McGillvray.

The vote in the Legislative Council revealed a split in the English party. The six English Councillors who were absent revealed, to a certain extent, a hesitancy about the extremes of Ryland and Richardson. Four of the English Councillors voted in opposition to what the petitions from the English in the Seigneuries and the English in the Townships had emphasized. The Legislative Council, the citadel of English aspirations, failed, in 1822, to attempt to further those aspirations. That failure was on account of a divided opinion among the English leaders regarding the best policy to resolve their problems as an English minority among a Canadian majority.

The Canadians in the Assembly of Lower Canada, however, never witnessed division regarding the questi on of Union among the English as did the Canadians in the Legislative Council. Had John Neilson remained in the Assembly and countered the attacks made by Ogden on the Canadians, then the Assembly would have witnessed it. As it was, however, Ogden encountered no opposition from any other Englishman. The result was that the Canadians accepted Ogden's views as those of all the English, rather than only part of the English.

CONCLUSION

From 1788 to 1821 it was the bureaucratic nativists who endeavoured persistently to maintain or achieve Union. Governor Dorchester had echoed the views of his Chief Justice, William Smith, who was so representative of the Anglo-Saxon Protestants who found a haven in Quebec after the catastrophe of the American Revolution. Smith's son-in-law, Jonathan Sewell, carried on the nativist tradition of Smith and urged Union to assimilate the Canadians. Herman Ryland, a contemporary of Sewell's, surpassed Sewell in nativist tendencies. Ryland attempted to influence Dalhousie as he had influenced Craig.

From 1810, ministers in high positions in the British government knew of the problems in Lower Canada and of the aspirations of the nativists. When a suggestion was made to the King's ministers in 1822 to unite the Canadas, that suggestion was received by a number of ministers who had long been acquainted with the problems of the English in Lower Canada.

Wilmot established a legal foundation for Imperial intervention from clauses in the Constitutional Act of 1791. In addition, he not only had the revision theory gleaned from Pitt's words, but also possessed the impermanence or circumstantial expediency theory as a basis for legislative

action.

The Under-Secretary for the Colonies possessed abundant information about the economic problems of Upper Canada and about the political and economic problems of Lower Canada. That information came from six bureaucrats, namely, Marshall, Monk, Caldwell, Robinson, Stephen and Bathurst; one former Lower Canadian bureaucrat, Osgoode; one soldier-bureaucrat, Sherbrooke; one clergyman-businessman, Strachan; and one politician-businessman, Ellice. Of these advisers, four were linked with Lower Canada, namely, Osgoode, Marshall, Monk and Caldwell; one with Lower Canada and Britain, namely, Sherbrooke; two with Upper Canada, namely, Robinson and Strachan, and three with Britain, namely, Stephen, Ellice and Bathurst. Of these ten English advisers, four opposed Union and six supported it.

Marshall, who prepared the Union Bill of 1822, was especially concerned about the fate of English bureaucrats dependent on a Canadian majority for salary and position. He urged Imperial intervention to provide a strong Executive and a weak Assembly. On the other hand, Caldwell claimed that the English in Lower Canada were responsible for the aggressive tactics of the Canadians in the Assembly. Those tactics were not signs of disloyalty to the King, but rather symptoms of a young Assembly. He urged that the Executive and Assembly have equal money dispensing power because

whenever the Assembly vetoed money bills the effects were severely felt by the officers and immediate dependents of the Crown.

Monk urged Union as a means to prevent further problems between Lower Canada and Upper Canada as well as to strengthen the Executive. Robinson, however, opposed Union because Britain had the power to intervene to aid Upper Canada's economic problem. Moreover, the Upper Canadian Attorney-General feared a French-Canadian majority in the united legislature in 1822.

The possibility that the English might have been a minority was Strachan's main reason for opposing Union; whereas, Stephen asserted that a minority position for the English was no cause for alarm because the English inherent trait to govern would make up for lack of numbers. Stephen advocated a united legislature with equal French and English representation. The two would offset each other's power and in time of trouble, the governor would moderate.

Ellice had suggested the adoption of Union on the King's ministers as the only means to promote the business interests of the Canadas and Britain. On the other hand, Sherbrooke opposed Union because there would be more problems with Union than without it. Bathurst must have supported Union; otherwise, as Colonial Secretary he could

have stopped the proposed Union Bill.

The British government was aware of conflicting opinions about the advantages of retaining Canada and other colonies. So aware of these conflicting opinions was the government that it issued officially the reasons for retaining Canada. Wilmot accepted those reasons, but did not use those reasons in any way whatsoever during the debate on the union clauses in the Canada Government and Trade Bill of 1822.

Among the opposition in the House of Commons, the members of the group which advocated a continued loosening of Britain's ties with British colonies were known as Radicals. Their belief in the principles of democracy made them willing to grant the fullest self-government and even complete freedom to the colonies. They welcomed any colonial discussion the Conservative government of Lord Liverpool commenced because the Radicals could attack any government colonial legislation short of independence on the grounds that the Imperial government was interfering with the democratic rights of the colonists. The union clauses in the Canada Government and Trade Bill afforded the Radicals an opportunity to attack the government for interfering with the democratic rights of the people in the Canadas.

Bathurst, Ellice and Wilmot were fully aware of what

would happen to the proposed Union of the Canadas when it was debated in the House of Commons. They attempted to obviate a government defeat by obtaining the consent of Sir James Mackintosh, who later led the Radical attack on the union clauses to avoid discussion of the union clauses. It was impossible to comprehend how the three of them ever convinced themselves that Mackintosh, who had defended the French Revolution so strongly in 1791, could abandon his principles of democracy and liberty to waive the union clauses. Worse still for the government was Wilmot's inability to support the union clauses on any basis other than expediency. As Colonial Under-Secretary for the Colonies, Wilmot ought to have had an investigation for precedents to defend his bill if the need arose. Furthermore, he ought to have broadened the defense of his bill by requesting a report on the advantages and disadvantages of the Union of the Canadas from Viscount Palmerston, Secretary of War and Lord Melville, the First Lord of the Admiralty. Furthermore, there were at least three members of the ministry, Liverpool, Bathurst and Goulbourn, who could have provided a detailed account of the question of Union from 1810 to 1822. Had Wilmot been prepared to discuss other advantages of Union than that of expediency, the brunt of the Radical attack would have been mitigated. Wilmot had abundant political and economic advice on the

proposed Union, but it was inadequate to counter the Radical opposition. Wilmot was not adequately prepared to present the case for the Union of the Canadas.

The British in the House of Commons divided on the question of Union. Wilmot led the government support of the Union, but soon relinquished it to Ellice. Among the others who supported the Union were Goulbourn, Marquis of Londonerry and Francis Burdett. On the other hand, Mackintosh led the opposition throughout the debates.

Others, who were not members of parliament, tried to influence the decision on the question of Union. Among these were Hart Logan, James Monk, Charles Parker and John Galt.

There was division not only among the British in the House of Commons, but also among the King's ministry. It was possible that the members of the ministry who were present for the vote to commit the Canada Government and Trade Bill to committee were those who earlier supported Union.

The petitions from Upper Canada illustrated that the English in that province were divided regarding the question of Union. The petitions and resolutions against the Union Bill attacked the provisions in the bill that restricted political liberty. The petitioners against the bill preferred the status quo. They did not want to risk the chance of a French-Canadian majority in the united legis-

lature. At the same time, however, the petitioners divorced themselves from the problems of the English in the Seigneuries and the English in the Townships.

The petitions and resolutions from Upper Canada supporting Union urged the economic advantages of the measure, especially a solution to the problem concerning the division of revenue. The petitions and resolutions remained silent on the role of the French Canadian in the Union.

When the issue of Union reached the Legislature of Upper Canada, the English in the Assembly almost divided evenly on whether or not the Assembly ought to consider the question of Union. So incensed was Jonas Jones at the decision of the Assembly not to consider the question that he attempted to counter that decision with an opposing motion. Only three others, namely, Walter F. Gates, W. Kerr, and F. Randall supported Jones.

In contrast to the division among the English in the Assembly was the apparent unanimity among the English in the Legislative Council of Upper Canada. The Council's decision to leave the matter to Britain received complete concurrence from Lieutenant-Governor Maitland.

In Lower Canada, all the English petitions supported Union. They all advocated assimilation of the Canadians. In this regard, the petition of Montreal was the most extreme. There were signs in the petitions that if there

were Union, the English in the Townships and the English in the Seigneuries would differ regarding the projects on which government funds would be spent.

When the proposed Union was discussed in the Assembly of Lower Canada over half of the English members were absent. Of the five that were present, George Garden and Jacob Oldham supported Charles Ogden's attempt to replace the Assembly's petition against Union. Huges Heney and John Davidson voted with the Canadians in favour of the address. John Neilson, the only Englishman who would have opposed Ogden in the Assembly, had departed for England to oppose Union.

A greater division occurred among the English in the Legislative Council. On the day of the vote, one-third of the English who could have been there were absent. Of the ten who were present, four voted with the Canadians in favour of a petition against Union. As a result of that decision, six councillors, John Richardson, Herman Ryland, James Irwine, Roderick McKenzie, Charles W. Grant and William F. Felton had an official protest entered in the Journals of the Legislative Council of Lower Canada.

The English divided on the question of Union whenever it was discussed. They divided between 1791 and 1821 with English merchants and especially English bureaucrats advocating Union and various governors of Lower Canada

opposing Union. They divided again during the preparation of the Union Bill at the Colonial Office with the Upper Canadian consultants opposing; the Lower Canadian consultants divided, and the British consultants also divided. In the House of Commons the proposed Union met such opposition that it had to be withdrawn. Finally, the English reactions to Union and clauses in the Union Bill in the Canadas revealed an opposition that the Colonial Office never anticipated. There were definitely differing viewpoints among the English regarding the proposed Union of 1822 to unite Lower Canada and Upper Canada.

A BILL (as amended by the Commitee) for uniting the Legislatures of the Provinces of Lower and Upper Canada.

Whereas in the present situation of the Provinces of Lower and Upper Canada, as much with relation to Great Britain as to each other, a joint Legislature for both the said Provinces would be more likely to promote their general security and prosperity than a separate Legislature for each of the said Provinces, as at present by law established; Preamble.

Be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in his present Parliament assembled, and by the authority of the same, That so much of an Act passed in the thirty-first year of the reign of his late Majesty King George the Third, intituled, "An Act to repeal certain parts of "an Act passed in the fourteenth year of his "Majesty's reign, intituled, 'An Act for making "'more effectual provision for the Government of "'the Province of Quebec in North America, and to "'make further provision for the Government of "'the said Province,'" as provides for the compos- So much of 31 Geo. 3, c. 31, as provides a Legislature for each of the Provinces of Lower and Upper Canada, repealed.

ing and constituting within each of the said Provinces respectively, a Legislative Council and Assembly, and for the passing of laws by the Legislative Council and Assembly of each Province, shall be and the same is hereby repealed, except in so far as the same or any of the provisions thereof, may by this present Act be continued or applied to the purposes of the joint Legislature to be constituted in manner hereinafter mentioned: Provided also, that so much of an Act passed in the fourteenth year of the reign of his said late Majesty, intituled, "An Act for making more effectual provision for "the Government of the Province of Quebec in "North America," as is repealed by the said Act passed in the thirty-first year aforesaid, shall be deemed and taken to be, and shall remain repealed.

Henceforth to be one joint Legislative Council, and one joint assembly for both Provinces.

And be it further Enacted, That from and after the passing of this Act, there shall be within the said two Provinces, and for the same jointly, one Legislative Council and one Assembly, to be composed and constituted in manner hereinafter described, and which shall be called "The Legislative Council and Assembly of

"the Canadas;" and that within the said Provinces, or either of them, His Majesty, His Heirs or Successors, shall have power, during the continuance of this Act, by and with the advice and consent of the said Legislative Council and Assembly of the Canadas; to make laws for the peace, welfare, and good government of the said Provinces, or either of them, such laws not being repugnant to this Act, nor to such parts of the said Act passed in the thirty-first year aforesaid, as are not hereby repealed; and that all such laws being passed by the said Legislative Council and Assembly, and assented to by His Majesty, His Heirs or Successors, reassented to in His Majesty's name by the Governor in Chief in and over the said provinces of Lower and Upper Canada, or in case of the death or absence of such Governor in Chief, by the Lieutenant Governor of the Province of Upper Canada for the time being, or in case of the death or absence of such Lieutenant Governor, then by the Lieutenant Governor of Lower Canada for the time being, or in case there shall be no Lieutenant Governor at such time resident in the Province of Lower Canada, then by the person administering the government

thereof for the time being, shall be and the same are hereby declared to be, by virtue of and under the authority of this Act, valid and binding to all intents and purposes whatever within the said two Provinces.

Joint Legislative Council to consist of the present Members of both Councils.

And be it further Enacted, That the present members of the Legislative Councils of Lower and Upper Canada shall, by virtue of this Act, and without any new or other commissions for that purpose, constitute together the Legislative Council of the Canadas, which said members shall take precedence in the joint Legislative Council according to the date of the instruments by which they were originally summoned to the Legislative Councils of the two Provinces respectively; and that it shall also be lawful for His Majesty, His Heirs or Successors, from time to time, by an instrument under his or their sign manual, to authorize and direct the said Governor in Chief, or in case of his death or absence, such other person, and in such order respectively as is hereinbefore directed, to summon to the said Legislative Council, by an instrument, under a seal to be transmitted by His Majesty to

Other Persons may be summoned.

the Governor in Chief, or under any other seal which the said Governor in Chief shall be by His Majesty directed to use for the purposes of this Act, and which shall be called the Great Seal of the Canadas, and shall be applied only to the purposes directed by this Act, such other person or persons as His Majesty, His Heirs or Successors, shall think fit; and that every person who shall be so summoned to the said Legislative Council, shall thereby become a member thereof.

Such Persons only shall be summoned as directed by 31 G.3.

And be it further Enacted, That such persons only shall be summoned to the said Legislative Council, as by the said above-mentioned Act, passed in the thirty-first year aforesaid, are directed to be summoned to the Legislative Council of the said two Provinces respectively; and that every member of the said Legislative Council shall hold his seat for the same term, and with the same rights, titles, honours, ranks, dignities, privileges and immunities, and subject to the same provisions, conditions, restrictions, limitations and forfeitures, and to the same mode of proceeding, for hearing and determining by the said Leg-

islative Council all questions which shall arise touching the same, as are in the said Act, passed in the thirty-first year aforesaid, mentioned and contained, with respect to the members thereby directed to be summoned to the Legislative Council of the two Provinces respectively.

Governor to appoint and remove the Speaker of the Legislative Council.

And be it further Enacted, That the Governor-in-Chief, or in case of his death or absence, such other person, and in such order respectively as is hereinbefore directed, shall have power and authority from time to time, by an instrument under the Great Seal of the Canadas, to constitute, appoint and remove the Speaker of the said Legislative Council.

Joint Assembly to consist of the present Members of both, and to continue until 1 July 1825, unless sooner dissolved.

And be it further Enacted, That the members at present composing the Assemblies of the said two Provinces shall, together with such new members as shall or may be returned for either of the said Provinces respectively in manner hereinafter mentioned, form and constitute the Assembly of the Canadas, and shall be and continue until the first day of July one thousand eight hundred and twenty-five, unless sooner dissolved; and that in

case of a dissolution of the said Assembly, or of vacancies occurring therein, members shall be returned from the same counties and places, and in the same manner, and in the same numbers, except as hereinafter otherwise provided, as now by law they are returned within the two Provinces respectively.

Act of Upper Canada, 60 G. 3, to continue in force.

And whereas an Act was passed by the Provincial Legislature of Upper Canada, in the sixtieth year of the reign of his said late Majesty, intituled, "An Act for increasing the Representation of the Commons of this Province in the House of Assembly;" Be it therefore further Enacted, That the said Act, and all the provisions therein contained, except as hereinafter otherwise provided, shall remain in full force and effect, and shall be applied to the representation of the said Province of Upper Canada in the joint Assembly, in like manner as the same were applicable to the representation thereof in the Assembly of the said Province of Upper Canada before this Act was passed.

Governor of Lower Canada may erect new

And be it further Enacted, That it shall and may be lawful for the Governor,

Lieutenant Governor, or person administering the government of the said Province of Lower Canada for the time being, from time to time as he shall judge expedient, from and out of that part of the said Province of Lower Canada which has been erected into townships since the number of representatives for the said Province was settled by proclamation, to form and erect new counties, by instrument or instruments under the Great Seal of the said Province, each such new county to consist of not less than six townships; and that when and so often as any such new county shall be formed and erected as aforesaid, the Governor, Lieutenant-Governor, or person administering the government of the said Province of Lower Canada, shall issue a writ for the election of one member to serve for the same in the Assembly; and that whensoever the said Governor, Lieutenant-Governor, or person administering the government as aforesaid, shall deem it expedient that any such new county, or any county heretofore erected within the said Province of Lower Canada, and at present represented by only one member, shall be represented by two members, he shall in like manner

Counties, out of the Townships to be represented in the Assembly.

issue writs for that purpose: Provided always, that no sub-division of any counties now erected or to be hereafter erected within either of the said Provinces, except as hereinbefore provided with respect to the said townships, shall extend or be construed to extend to increase the number of representatives for such counties: Provided also, that the number of representatives for each Province shall not exceed sixty.

No Act to alter the number of Representatives to be passed, unless by Two-thirds of both Houses.

And be it further Enacted, That no act by which the number of representatives of either Province shall be altered, shall hereafter be passed by His Majesty, by and with the advice and consent of the said Legislative Council and Assembly, unless the same shall have been passed by two-thirds at least of the members present at the question for the second and third reading of the same in the said Legislative Council and Assembly respectively.

Provisions of 31 G. 3, respecting Elections, to remain in force.

And be it further Enacted, That all and every the provisions and regulations respecting the appointment and nomination, duties, privileges and liabilities of returning officers for either of the said Provinces respectively,

and respecting the eligibility, qualification and disability of persons to sit as members in the said Assembly, or to vote on the election of such members, and respecting any oath to be taken by candidates or voters at such elections, and respecting all other proceedings at such elections, and respecting the times and places of holding such elections, as are contained in the said abovementioned Act, passed in the thirty-first year aforesaid, except in so far as the said provisions and regulations are hereby in anywise altered, shall remain and continue in force in both of the said Provinces; and that all and every the provisions and regulations respecting the objects above enumerated, or any of them, which are contained in any Act or Acts of the provincial Legislatures, which are now in force in either of the said Provinces respectively, shall remain and continue in force within such Province, except as the same are hereby in anyways altered, until otherwise provided for by the joint Legislature.

Governor may summon a new Assembly.

And be it further Enacted, That when and so often hereafter as it may be necessary to summon and call together a new Assembly for the said

two Provinces, it shall and may be lawful for the said Governor-in-Chief, or in case of his death or absence, then for such other person, and in such order respectively as is hereinbefore directed, by an instrument under the said Great Seal of the Canadas, to summon and call together the said Assembly as hereinafter expressed and provided.

And shall issue Writs for the election of Members, as directed by 31 Geo. 3.

And be it further Enacted, That Writs for the election of members to serve in the said Assembly, shall be issued by the Governor, Lieutenant-Governor, or person administering the government of the Province within which such members shall be chosen respectively, in the same manner and directed to the same officers and returnable within the same period, as in and by the said Act made and passed in the thirty-first year aforesaid, is directed and provided.

Qualification in future to be real Property, to the value of £500 sterling.

And be it further Enacted, That on the first general election of members for the said Assembly, which shall take place from and after the passing of this Act, and on all subsequent elections, whether general or for particular places, in cases of vacancy, which

shall be holden in either of the said Provinces, no person shall be capable of being elected, who shall not be legally possessed to his own use and benefit, of lands and tenements within one or other of the said Provinces, of the value of Five hundred pounds sterling over and above all rents, charges and incumbrances which may affect the same, such lands and tenements being by him held in freehold, in fief or in roture; and that every candidate at such election, before he shall be capable of being elected, shall, if required by any other candidate, or by the returning officer, take an Oath in the following form, or to the following effect:-

Oath to that effect.

"I, A.B. do Swear, That I am legally and
"and bona fide possessed to my own use
"and benefit, of lands and tenements
"within the Province of Canada,
"of the value of sterling,
"over and above all rents, charges and
"incumbrances which may affect the same;
"and that the said lands and tenements
"are by me held in freehold, in fief, or

"in roture (as the case may be;) and that I "have not obtained the same fraudulently, "for the purpose of enabling me to be re- "turned Member to the Assembly of the Can- "adas; and also that I am otherwise quali- "fied, according to the provisions of law, "to be elected and returned to serve as a "Member thereof."

Provided always, That nothing in this Act contained shall be construed to affect any Act now in force in either of the said Provinces respectively relating to the qualification (other than as respects property) of any candidate or voter at elections.

Persons swearing falsely guilty of perjury.

And be it further Enacted, That if any person shall knowingly and wilfully take a false oath respecting his qualification, either as candidate or voter at any election as aforesaid, and shall thereof be lawfully convicted, such person shall be liable to the pains and penalties by law inflicted on persons guilty of wilful and corrupt perjury in the Province in which such false oaths shall have been taken.

Trials of

And be it further Enacted, That when-

ever hereafter any question shall arise touching the validity of the election or return of any person in either Province to serve in the Assembly, such question shall be tried in the Joint Assembly, according to the mode of proceeding now established by law in that Province in which the disputed election or return shall have been made, until a uniform course of proceeding shall be duly established for both Provinces. contested Elections.

And be it further Enacted, That it shall and may be lawful for the said Governor-in-Chief, or in case of his death or absence, then for such other person, and in such order respectively as is hereinbefore directed, if at any time he shall deem it expedient, to summon and authorize, by an instrument under his hand and seal, two members of the executive Council of each Province to sit in every Assembly, with power of debating therein, and with all other powers, privileges, and immunities of the members thereof, except that of voting. Governor may summon Two Members of the Executive Council of each Province to the Assembly.

And be it further Enacted, That the said Legislative Council and Assembly shall Joint Legislature to be summoned not

be called together for the first time at some period not later than the first day of September, one thousand eight hundred and twenty-four, and once afterwards in every twelve calendar months; and that the said Governor-in-Chief, or in case of his death or absence, such other person, and in such order respectively as is hereinbefore directed, shall and may convene the first and every other session of the said Legislative Council and Assembly, at such places within either Province, and at such times, under the restrictions aforesaid, as he shall judge most conducive to the general convenience, giving due and sufficient notice thereof, and shall have power to prorogue the same from time to time, and to dissolve the same by proclamation or otherwise, whenever he shall deem it necessary or expedient.

later than 1st September 1824, and once every twelve Months afterwards.

And be it further Enacted, That every Assembly hereafter to be summoned and chosen, shall continue for five years, from the day of the return of the writs for choosing the same, and no longer; subject, nevertheless, to be sooner prorogued or dissolved by the

Every future Assembly to continue five Years.

said Governor-in-Chief, or in case of his death or absence, by such other person, and in such order respectively as is hereinbefore directed.

Majority of Votes to decide.

And be it further Enacted, That all questions which shall arise in the said Legislative Council or Assembly, except in the cases herein otherwise provided, shall be decided by the majority of voices of such members as shall be present; and that in all cases where the voices shall be equal, the Speaker of such Council or Assembly shall have a casting voice.

Oath prescribed by 31 G. 3, to be taken.

Provided always, and be it further Enacted, That no member either of the Legislative Council or Assembly shall be permitted to sit or vote therein, until he shall have taken and subscribed the oath prescribed for that purpose by the said Act passed in the thirty-first year aforesaid, before a person duly authorized to administer the same, as in and by the said Act is directed.

Royal Assent to be declared or withheld as prescribed by 31 G. 3.

And be it further Enacted, That any Bill which shall be passed by the Legislative Council and Assembly shall be presented for His Majesty's assent to the said Governor-in-Chief, or in case of his death or absence, to

such other person, and in such order respectively, as is hereinbefore directed, who shall, according to his discretion, declare or withhold His Majesty's assent to such Bill, or reserve such Bill for the signification of His Majesty's pleasure thereon, subject always to the same provisions and regulations with respect to Bills which may either be assented to, or from which His Majesty's assent may be withholden, or which may be reserved as aforesaid, as the case may be, as in and by the said Act, passed in the thirty-first year aforesaid, are contained and enacted with regard to such Bills respectively.

All Laws now in force to continue, except as hereby repealed or altered.

And be it further Enacted, That all laws, statutes, or ordinances which are in force at the time of passing this Act, within the said Provinces or either of them, or in any part thereof respectively shall remain and continue to be of the same force, authority, and effect in each of the said Provinces respectively as if this Act had not been made, except in as far as the same are repealed or varied by this Act, or in so far as the same shall or may be hereafter by virtue of and under the authority of this Act repealed or varied by His Majesty, his

heirs or successors, by and with the advice and consent of the said Legislative Council and Assembly.

Privileges of Members to continue.

And be it further Enacted, That all rights, privileges, immunities, and advantages which are at present legally exercised and enjoyed by the members of the Assemblies of Lower and Upper Canada respectively, shall continue to be exercised and enjoyed by them as members of the said Assembly of the Canadas, in as full and as ample a manner as heretofore: Provided always, That no privilege of the said Legislative Council or of the said Assembly, shall extend or be construed to extend to authorise the imprisonment of any of His Majesty's subjects not being members of the said Legislative Council or of the said Assembly, or officers or servants of the said bodies respectively, until an Act be passed declaratory of the rights and privileges of the said bodies in this respect.

Henceforth all written Proceedings, and after 15 Years, all Debates to be in Eng-

And be it further Enacted, That from and after the passing of this Act, all written proceedings of what nature soever of the said Legislative Council and Assembly, or

either of them, shall be in the English language and none other; and that at the end of the space of fifteen years from and after the passing of this Act, all debates in the said Legislative Council or in the said Assembly, shall be carried on in the English language and none other.

lish alone.

And whereas by the said Act of the Imperial Parliament of Great Britain, made and passed in the fourteenth year aforesaid, intituled, "An Act for making more effectual provision for the government of the province of Quebec, in North America," it was, amongst other things, declared, That His Majesty's subjects, professing the religion of the church of Rome of and in the said Province of Quebec, might have, hold and enjoy the free exercise of the said religion, subject to the King's supremacy as in the said Act mentioned, and that the clergy of the said church might hold, receive, and enjoy their accustomed dues and rights with respect to such persons only as should profess the said religion; Be it therefore further Enacted and Declared, that nothing in this Act contained, nor any Act to

Persons professing the Religion of the Church of Rome, not to be affected.

be passed by the said joint Legislature, nor any resolution or other proceeding of the said Legislative Council or Assembly, shall in anywise affect or be construed to affect the free exercise of the religion of the Church of Rome by His Majesty's subjects professing the same, within either of the said Provinces, but the same may continue to be exercised, and the clergy of the said church and the several curates of each respective parish of the said Province of Lower Canada, now performing the clerical duties thereof, or who shall hereafter, with the approbation and consent of His Majesty, expressed in writing by the Governor or Lieutenant-Governor, or persons administering the government of the said Province of Lower Canada for the time being, be thereto duly collated, appointed, or inducted, may continue to hold, receive, and enjoy their accustomed dues and rights in as full and ample manner, to all intents and purposes, as heretofore, and as is provided and declared by the said last-mentioned Act.

Certain provisions of 31 G. 3, to

And be it further Enacted, That all the provisions, regulations, and restrictions made

and imposed in and by the said Act, passed in the thirty-first year aforesaid, with respect to any Act or Acts containing any provisions of the nature therein particularly mentioned and specified, shall and the same are hereby declared to extend and apply to each and every Act which shall be passed by the said Legislative Council and Assembly, and which shall contain any provisions of the nature in and by the said last-mentioned Acts set forth and specified.

extend to Acts to be passed by the joint Legislature.

And be it further Enacted, That all and every the accounts, returns, papers, and documents, which by any Act now in force in either Province, are directed to be laid before the Legislature thereof respectively, shall, under the penalties therein provided, be in like manner transmitted and laid before the Legislature of the Canadas, during the continuance of such Acts.

Accounts, &c. to be laid before the Legislature.

And be it further Enacted, That the officers and other persons receiving salaries or allowances in respect of services rendered by them in the Legislatures of their respective Provinces, shall continue to receive such

Salaries of Officers of the Legislature to continue till otherwise provided for.

salaries and allowances as heretofore, until otherwise provided for by any Act which shall be passed by His Majesty, His Heirs or Successors, with the advice and consent of the Legislative Council and Assembly of the Canadas.[1]

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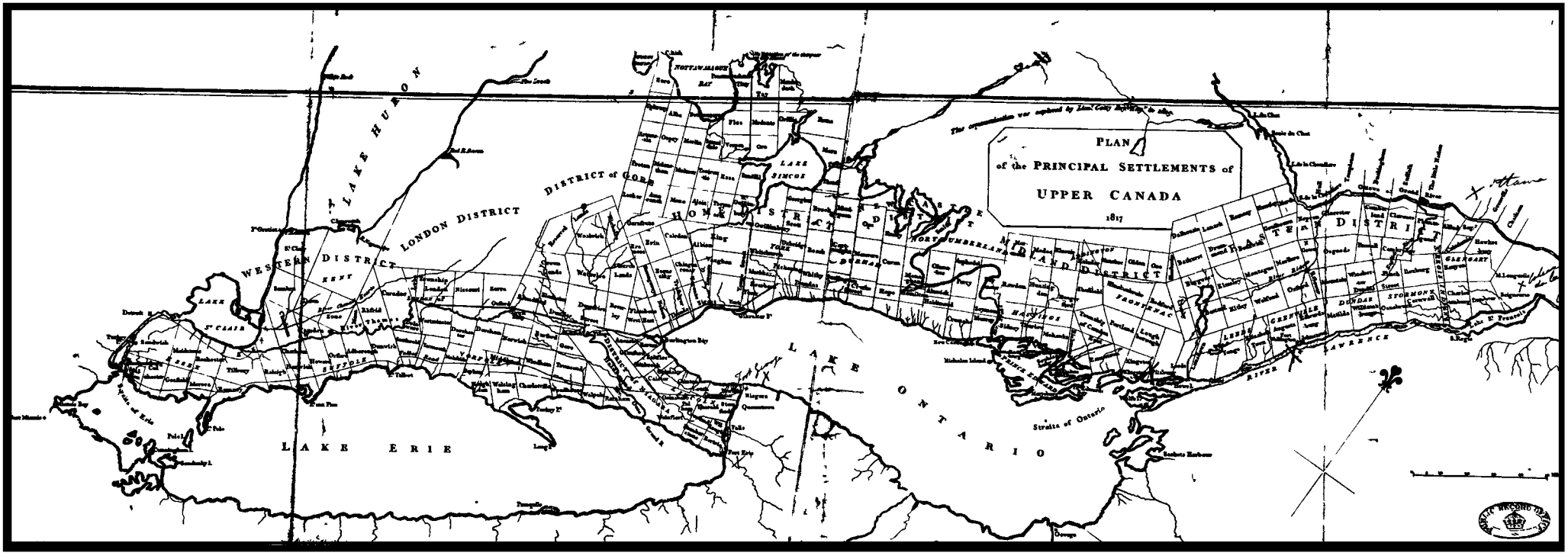
1 C.O. 42, Vol. 193, Reel No. B-149, Public Archives of Canada, pp. 24-28.


PLAN
of the PRINCIPAL SETTLEMENTS of
UPPER CANADA
1817
LAKE HURON
LONDON DISTRICT
DISTRICT of GORE
WESTERN DISTRICT
HOME DISTRICT
MIDLAND DISTRICT
EASTERN DISTRICT
LAKE ERIE
LAKE ONTARIO
Straits of Ontario
RIVER ST LAWRENCE

APPENDIX II

MAP OF UPPER CANADA USED AT THE COLONIAL OFFICE DURING THE PREPARATION OF THE CANADA GOVERNMENT AND TRADE BILL OF 1822[1]

1 C.O. 42, Vol. 193, Reel No. B-150, Public Archives of Canada, p. 381.

BIBLIOGRAPHY

1. Primary Sources

a) Manuscript

P.A.C., Series A2, MG24, Vol. 1, Ellice Papers. These papers illustrated how the link between John Richardson and the Ellice family had been established by 1781. Other volumes of the same papers showed how the relationship continued at least up until 1823.

--------, Series A8, MG24, Private Letters to Lord Bathurst. Included among these letters was some correspondence from Wilmot in which the Under-Secretary for Colonial Affairs supplemented some of the debates in the House of Commons on the proposed Union of 1822. In addition, Wilmot expressed his views about the treatment that the British government gave his Canada Government and Trade Bill of 1822.

--------, Series A11, MG24, Sir George Murray Papers 1814-1815. These papers provided an opinion of Governor Prevost regarding a solution to the political problem in Lower Canada.

--------, Series D8, MG30, George Munro Grant Papers. These papers included correspondence between Bathurst and Sherbrooke in which Bathurst expressed certain considerations about the defence of the Canadas.

--------, Series Q, MG11, Vol. 36, pt. 2, Minutes of the Council, Quebec 1788. Herein was found certain pertinent correspondence between Colonial Secretary Sydney and Governor Dorchester regarding a political division of the province of Quebec.

--------, Series Q, MG11, Vol. 39, Petitions and Minutes of Council, Quebec 1789. Information was found here pertaining to Dorchester's views on the proposed political division of Quebec.

--------, Series Q, MG11, Vol. 42, Miscellaneous Correspondence, Quebec 1789. This volume contained further considerations about the proposed division of Quebec by Colonial Secretary Grenville.

--------, Series Q, MG11, Vol. 44, pt. 1, Letters from Lord Dorchester and Minutes of Council 1790. Herein was found Dorchester's final opinion on the proposed division. In addition, the volume also contained the opinion of Dorchester's Chief Justice, William Smith, regarding division.

--------, Series Q, MG11, Vol. 62A, pt. 1, Papers Respecting Lower Canada and Newfoundland 1790-1792. This source contained Adam Lymburner's lengthy speech against the political division of Quebec that he delivered before the House of Commons in 1791.

--------, Series Q, MG11, Vol. 97A, Lower Canada, Despatches to Governors 1805-1811. Of interest in this volume was Liverpool's advice to Craig about the conditions under which a Union of the provinces of Upper Canada and Lower Canada would be possible.

--------, Series Q, MG11, Vol. 106, pt. 2, Governor Craig and Miscellaneous 1807. This volume included some correspondence on the question of Union by John Black, an Englishman who had lived in Lower Canada for a number of years.

--------, Series Q, MG11, Vol. 112, Governor Craig 1810. This source was useful for the correspondence it contained between Craig and Colonial Secretary Liverpool regarding the political situation in Lower Canada and possible remedies for that situation.

--------, Series Q, MG11, Vol. 152, Governor the Duke of Richmond and Acting Governor James Monk 1819. This volume included the Duke of Richmond's plan for the resurrection of the commercial empire of the St. Lawrence River.

--------, Series Q, MG11, Vol. 153, pt. 2, Miscellaneous 1819. The only use made of this volume was to locate a letter from John Young, Governor Richmond's financial secretary, to Stuart Wortley, a member of the House of Commons. In the letter, Young not only revealed nativist tendencies, but also claimed that Richmond advocated Union.

--------, Series Q, MG11, Vol. 162, pt. 2, Public Offices and Miscellaneous for Lower Canada 1822. This reference provided information about the problems of Marshall and Monk immediately prior to 1822.

--------, Series Q, MG11, Vol. 163, pt. 1, Papers Collected by Mr. Wilmot-Horton on the Canada Bill 1822. This volume was used so often that its title was abbreviated to Wilmot Papers. It provided sources for the advice offered to Wilmot by Charles Marshall, James Monk, William Osgoode, John Caldwell and John Beverly Robinson during the preparation of the Canada Government and Trade Bill of 1822.

--------, Series Q, MG11, Vol. 164, pt. 1, Governor Lord Dalhousie. This volume contained a number of petitions concerning the proposed Union of 1822.

--------, Series Q, MG11, Vol. 165, Union of the Legislatures 1823. This source contained many of the petitions from Upper Canada in favour of Union as well as numerous petitions from Upper Canada against Union. In addition, it also included some petitions from Lower Canada. This volume also possessed the list of the members of the Legislative Council of Lower Canada who voted for the petition of the Council against the Union of the legislatures.

--------, Series Q, MG11, Vol. 331, Lieutenant-Governor Sir Peregrine Maitland 1822. Correspondence between Maitland and Bathurst in this volume helped to establish Maitland's opinion of John Beverly Robinson.

--------, Series Q, MG11, Vol. 332, pt. 1, Public Offices and Miscellaneous 1822. This was an important source because a letter in it established the link between Hart Logan and Edward Ellice and thereby established another connection between Ellice and Lower Canadian English businessmen.

--------, Series Q, MG11, Vol. 333, pt. 1, Lieutenant-Governor Sir Peregrine Maitland. This source included numerous petitions from Upper Canada regarding the proposed Union of 1822.

--------, RG7, Vol. 12, Colonial Secretary to Dalhousie. This reference included correspondence between Bathurst and Dalhousie in which Bathurst expressed his opinion about the role of Sir James Mackintosh in the preparation of the union clauses in the Canada Government and Trade Bill of 1822.

--------, Upper Canada Sundries, Vol. 56, 1822. This source included personal letters written by Robinson to George Hillier, the Civil Secretary of Maitland. Robinson kept Hillier very well informed on the development of the Union Bill in England.

b) Printed

Doughty, Arthur G., and Duncan A. McArthur, eds., Documents Relating to the Constitutional History of Canada 1791-1918, Ottawa, King's Printer, 1914. This source possessed a copy of the King's proclamation which divided Quebec into Lower Canada and Upper Canada.

Doughty, Arthur G., and Norah Story, Documents Relating to the Constitutional History of Canada 1819-1828, Ottawa, King's Printer, 1935. This source possessed copies of two British trade laws enacted on June 24, 1822. One act concerned trade between British possessions in America and the West Indies and other places in America and the West Indies. The other act concerned trade between British possessions in America and the West Indies and other parts of the world, exclusive of the West Indies. The two acts represented a relaxation of the Navigation Laws.

Fortescue, J.W., ed., Calendar of State Papers, Colonial Series, America and West Indies 1681 - 1685, London Eyre and Spottiswoode, 1898. This source provided an example to refute the assertion by Sir James Mackintosh that England had never deprived a British colony of its charter or constitution without dire consequences.

--------, Calendar of State Papers, Colonial Series, America and West Indies 1685-1688, London, Norfolk Chronicle Company Limited, 1899. This source provided an example to refute Sir James Mackintosh's assertion that England had never forced one of her colonies to unite with another English colony.

Great Britain, Hansard Parliamentary Debates 1820-1830, Second Series, Vol. VII, 1822. This source was a very good, but in complete account of the proceedings in the House of Commons during the debate on the Canada Government and Trade Bill of 1822. It was indispensable for a study of the contrasting opinions in the House of Commons regarding the proposed Union of the Canadas in 1822. This source also provided a knowledge of other legislation that was

considered during the debates on the Canada Government and Trade Bill.

--------, Report from the Select Committee on the Civil Government of Canada, Reprinted at Quebec, 1829. This report could be the subject of a thesis in itself. It resulted in a formal inquiry into the government of Canada, especially that of Lower Canada. It provided a source for information regarding the opinions of various people regarding Union on whom data was difficult to discover, such as, James Stephen, Robert Gillespie and Charles Parker.

Hansard, T.C., et. al., The Parliamentary History of England (from the Earliest Period to the Year 1803), Vols. 28, 29, London, T.C. Hansard, 1816. Although this reference did not provide the proceedings in the House of Commons in complete detail, it was still indispensable for a study of the differing opinions in the House of Commons regarding the proposed division of Quebec into Lower Canada and Upper Canada in 1791.

Lower Canada, Journals of the Legislative Assembly of Lower Canada, Vol. XXXII, 1823. None of the Journals consulted rendered a complete account of the debate on the Union Bill. Those for the Legislative Assembly of Lower Canada did include, however, the attempt by Charles Richard Ogden to vitiate the report brought in by the chairman of the committee on the Union Bill. No mention of any English opposition to Ogden's amendment was mentioned, but the recorded vote in the Journals showed that of the four other English present along with Ogden, two voted with the Canadians in support of the address to the King against Union.

--------, Journals of the Legislative Council of Lower Canada, 1823. The Journals did not record the vote on the address to the King against the Union. That record was found elsewhere. It did include, however, the signed protest of the six councillors who opposed the decision and who wanted their support for Union put into the Journals. The Journals helped to illustrate the division that occurred among the English in the Legislative Council regarding the question of Union.

Upper Canada, Journals of the House of Assembly of Upper Canada, 1823. Although the Journals did not include the debate on the proposed Union, they did provide a very good account of the preparation for the debate. There was an excellent record of the voting on the resolutions brought

in by the committee on the proposed Union. In addition, there was a good account of how the committee on the Union was formed.

--------, Journals of the Legislative Council of Upper Canada, 1821, 1822, 1823, 1823-24. Ontario Archives Report, Vol. II, 1915. The account herein on the proposed Union was of no value. It included only the address to the King against the proposed Union.

Shortt, Adam and Arthur G. Doughty, eds., Documents Relating to the Constitutional History of Canada 1759-1791, Ottawa, King's Printer, 1907. This reference possessed a good copy of the Constitutional Act of 1791.

2. Secondary Sources

a) General Works

Great Britain, The Annual Register (or a View of the History, Politics and Literature), London, R. Gilbert, 1810-1822. This reference provided a list of the King's ministry from 1810 to 1822, with the exception of the years 1819, 1820 and 1821. The list was used to trace those ministers who were acquainted with the problems of Lower Canada and the question of Union in 1810 up to 1822 and to show that a number of the members of the ministry in 1822 had been aware of the question of Union for at least twelve years.

Maccoby, S., English Radicalism 1786-1832 (from Paine to Cobbett) London, George Allen and Unwin Limited, 1955, p. 545. The author included reference to the radical opinion in Britain on both the Quebec Act of 1791 and the Canada Government and Trade Bill of 1822. In addition, the text included information about Sir James Mackintosh, a radical, who led the opposition against the union clauses in the Canada Government and Trade Bill.

Wilmot-Horton, Robert, Exposition and Defence of Earl Bathurst's Administration of the Offices of Canada, When Colonial Secretary, During the Years 1822-1827, Inclusive, London, John Murray, 1838. In the text Wilmot defended his policy in 1822. He cited various sources that claimed that if there had been Union in 1822, the rebellions

of 1837 would have been avoided. He concluded that he had succeeded in showing that under Lord Bathurst's administration a real and adequate remedy was suggested for the inherent difficulties growing out of the Act of 1791 which established the Constitution of the Canadas as it existed in 1838. In addition Wilmot included a copy of the proposed Union Bill of 1822 as well as his complete testimony before the Select Committee on the Civil Government of Canada in 1828.

Young, D.M., The Working of the British Colonial Office 1812-1830, unpublished thesis at the University of London, England on microfilm at the Public Archives of Canada, Reel No. P-145. This reference possessed a considerable amount of information about Wilmot and especially how he reorganized the Colonial Office. Young's thesis helped to illustrate the fact that the Canada Government and Trade Bill of 1822 was only one of the problems that the Colonial Office had to consider.

b) Pamphlets

P.A.C., A Short View of the Present State of the Eastern Townships in the Province of Lower Canada Bording on the Line Forty-Five Degrees with Hints for their Improvement, 1817, Pamphlet No. 1029. There were two useful things in this source, namely, a map and a definition of the Eastern Townships.

--------, Joint Address of the Legislative Council and the House of Assembly of Upper Canada to His Majesty and Report of the Committee Appointed by the Honourable the Legislative Council and the House of Assembly to Consider and Report Upon the Subject Matter of Certain Resolutions of the House of Assembly, in which the Honourable the Legislative Council have Concurred, Respecting the Financial Concerns of this Province with Lower Canada, 1822. Pamphlet No. 1121. This was a good source for an understanding of how the arrangements to divide the revenue collected at the port of Quebec between Upper Canada and Lower Canada ultimately affected Upper Canada. The legislature of Upper Canada invoked clause forty-six of the Constitutional Act of 1791 which reserved certain powers of intervention to Britain to deal with revenue problems between the two provinces.

--------, Observations on the Proposed Union of the Provinces of Upper and Lower Canada, Under One Legislature, Respectfully Submitted to His Majesty's Government by the Agent of the Petitioners for that Measure, 1823, Pamphlet No. 1161. These observations were by James Stuart of Montreal. The content of the observations was a synthesis of the petitions from the English in the Seigneuries and from the English in the Townships. Stuart revealed nativist tendencies in his strong plea for assimilation in his observations. Since the content existed in the petitions and since Stuart had illustrated his nativism at the meeting to prepare the Montreal petition supporting Union, Stuart's observations were of little use.

--------, The State of the Nation (at the commencement of the year 1822 considered under the Four Departments of Finance, Foreign Relations, Home Department, Colonies and Board of Trade), 1822, Pamphlet No. 1125. Under the section dealing with Colonies and the Board of Trade, this report stated the reasons why the British government thought Canada was important.

c) Periodicals

Brunet, Michel, "L'Honourable Adam Lymburner", Bulletin Reserches Historiques, Vol. XXXVII, No. 9, September, 1931. The article considered the English reaction to the division of Quebec in 1791. Of additional interest was the author's mention that Lymburner, a firm advocate of a united Quebec in 1791, had become an opponent of a united Canada in 1822.

Creighton, D.C., "The Struggle for Financial Control in Lower Canada, 1818-1831", Canadian Historical Review, Vol. XII, No. 2, June, 1931. This reference described the struggle between the executive and the assembly for financial control. It helped to establish the atmosphere in the government when the legislature debated the proposed Union. Since both the assembly and the executive were struggling for more financial control, the assembly by controlling expenditure and the executive by a permanent Civil List, both would support or oppose the Union according to whether Union meant more power for the assembly or the executive.

Martin, K.L.P., "Notes and Documents (The Union Bill of 1822)", Canadian Historical Review, Vol. V, No. 1, March, 1924. Martin discussed the Union Bill of 1822, but most of his article considered an alternative to Union, namely, federation.

Ormsby, William, "The Problem of Canadian Union 1822-1828", Canadian Historical Review, Vol. XXXIX, No. 4, December, 1958. This was a good, well documented article, but it tended to over emphasize John Beverly Robinson's role in the preparation of the Union Bill. In addition, it seemed to infer that there was no divided opinion among the English in the Canadas regarding Union.

Ryland, H.W., "Observations Relative to the Political State of Lower Canada", in Robert Christie, A History of Lower Canada, Vol. VI, Montreal, Richard Worthington, 1866. This was one of the articles by Ryland that provided evidence of his nativist tendency.

Soward, F.H., "The First Assembly in Lower Canada", Canadian Historical Review, Vol. IV, No. 3, September, 1923. The article was short, but it included a letter in full that John Richardson sent to Alexander Ellice in 1791. The letter described Richardson's pessimism about the future of the English in Lower Canada since the assembly was controlled by a majority of Canadians.

d) Newspapers

Kingston Chronicle (Microfilm Reel No. N-109, January 1, 1819 - June 3, 1825, Public Archives of Canada).

Vol. IV, No. 44, November 5, 1822

Vol. IV, No. 47, November 22, 1822

Vol. IV, No. 48, November 29, 1822

Vol. IV, No. 49, December 6, 1822

Vol. IV, No. 51, December 20, 1822

Vol. V , No. 3, January 17, 1823

Niagara Gleaner, (Microfilm Reel No. N-522, July 2, 1818 - October 30, 1824, Public Archives of Canada. The 1822 editions were missing.

Vol. IV, No. 1, January 4, 1823

Quebec Gazette (Originals located at Public Archives of Canada).

No. 3234, July 4, 1822

No. 3247, August 19, 1822

No. 3253, September 9, 1822

No. 3255, September 16, 1822

No. 3256, September 19, 1822

No. 3261, October 7, 1822

No. 3266, October 24, 1822

No. 3282, December 29, 1822

No. 3293, January 23, 1823