

# JAMES HANNAY

WILMOT AND  
TILLEY

James Hannay  
**Wilmot and Tilley**

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# **James Hannay Wilmot and Tilley**

## **LEMUEL ALLAN WILMOT**

### **CHAPTER I ANCESTRY AND EARLY LIFE**

THE contest for responsible government which was carried on in all the provinces of British North America for so many years resembled in some of its features a modern battle, where the field of operations is so wide that it is impossible for a general to cover it with his eye or to keep control of all the movements of his subordinates. In such a case, everything depends on the ability of the generals who command the different army corps, who, operating in remote parts of the field, must take the responsibility of success or failure. The two Canadas were so far removed from New Brunswick, and the means of communication were so poor, that there was but little help, even in the way of suggestion, to be expected from them, while the contest for responsible government was being carried on. Even the efforts in the same direction which were being made in the province of Nova Scotia had but little influence on the course of events in New Brunswick, for each province had its own particular grievances and its own separate interests. Thus it happened that the battle for responsible government in New Brunswick was fought, to a large extent, without reference to what was being done in the other provinces which now form the Dominion of Canada, and the leaders of the movement had to be guided by the peculiar local circumstances of the situation. Still, there is no doubt that the efforts of all the provinces, directed to the same ends, were mutually helpful and made the victory more easily won.

Among the men who took a part in the contest for responsible government in New Brunswick, Lemuel Allan Wilmot undoubtedly held the foremost place, not only by reason of the ability with which he advocated the cause, but from the trust which the people had in him, which made him a natural leader and the proper exponent of their views. There were, indeed, men working in the same field before his time, but it was his happy fortune to witness the fruit of his labours to give the province a better form of government, and to bring its constitution into line with the system which prevailed in the mother country. He not only viewed the land of promise from afar, but he entered into it, and he became the first native lieutenant-governor of the province,—a result which even he, sanguine as he was, could hardly have contemplated when he began his career as a public man.

#### **THE WILMOT FAMILY**

Lemuel Allan Wilmot was born in the county of Sunbury, on the banks of the St. John River, on January 31st, 1809. He was the son of William Wilmot, a respectable merchant and lumberman, who was in partnership with William Peters, grandfather of Sir Leonard Tilley. William Wilmot was the son of Lemuel Wilmot, a Loyalist, who was a resident of Poughkeepsie, New York, at the beginning of the Revolution. He (Lemuel) raised a company of soldiers for the service of the king, and became a captain in the Loyal American Regiment which was commanded by Beverley Robinson, serving in that corps during the war. At the peace, he came to New Brunswick and settled in Sunbury County on the river St. John. The Wilmots were a respectable English family, and the first of the name in America was Benjamin Wilmot, who was born in England in 1589 and came to America with his wife Ann, probably prior to 1640. He was one of the early settlers of New Haven, Connecticut, and the records of that colony show that he took the oaths of fidelity at a court held on May 2d, 1648.

He died in 1669. His son William, who was born in 1632, was probably also a native of England. He married Sarah Thomas in 1658, and died in 1689.

Thomas Wilmot, his son, was born in 1679. He married Mary Lines, and their son Ezekiel was born in 1708. Ezekiel Wilmot and his wife Beulah were the parents of Lemuel, who was born in 1743. Lemuel Wilmot married Elizabeth Street, and William, the father of the subject of this biography, was their son. William Wilmot married Hannah Bliss, a daughter of the Hon. Daniel Bliss, a Massachusetts Loyalist, who became a member of the council of New Brunswick and was the father of John Murray Bliss, one of the judges of the supreme court of that province. His grandfather was Colonel John Murray, a Massachusetts Loyalist, who was for many years a member of the general court of that colony and who became a mandamus councillor. It will thus be seen that Lemuel Wilmot came from the best New England stock, and that his connections were highly respectable and even distinguished. He was proud of his New England descent, and claimed the usual ancestor from among the passengers of the *Mayflower* who landed at Plymouth in 1620. If this claim is correct, his descent from the Pilgrim Fathers must have been through the female line, and no record of it has been preserved. The matter is not of much consequence at the present day, for the Wilmots have made a record in their province far more distinguished than that which they won in New England, for they have given to New Brunswick five members of the legislature, a senator and member of the House of Commons of Canada, two members of the executive of New Brunswick, and one of the privy council of Canada, an attorney-general and a provincial secretary of New Brunswick and two lieutenant-governors.

#### LIEUTENANT-GOVERNOR CARLETON

The system of government which existed in all the British North American colonies at the time when L. A. Wilmot was born was practically the same. New Brunswick had been separated from Nova Scotia in 1784, and, in the autumn of that year, its first governor was sent out in the person of Thomas Carleton, a brother of Sir Guy Carleton. Thomas Carleton had been an officer in one of the regiments which fought during the War of the Revolution, but he was in no way distinguished, and had no special qualifications for the position he was called upon to fill. That fact, however, did not concern the persons in England who appointed him. In those days, fitness or ability had very little to do with colonial appointments. Carleton continued to fill the office of governor and lieutenant-governor until his death in 1817; but for the last fourteen years of his term he resided in England, and the duties of his office were performed by a succession of administrators under the name of presidents. To assist him in his deliberations, Carleton had a council of twelve members, who were appointed by the Crown and were therefore wholly under the influence of the governor and the authorities in England. In 1809, its number had been reduced to ten, and it was composed of the four judges of the supreme court, the provincial secretary and the surveyor-general, who held their offices for life, and four other persons. This council, in addition to its executive functions, also sat as the upper branch of the legislature, and, besides being wholly irresponsible except to the governor, it sat with closed doors, so that the public had no opportunity of knowing what was being done. It was not until the year 1833 that any portion of the journals of the legislative council was published.

The House of Assembly consisted of members chosen by the freeholders of the several counties and the freeholders and freemen of the city of St. John. This House was able to exert but a limited influence on the government of the country, for all authority was vested in the lieutenant-governor and he was able to act in a manner quite independent of the legislature. All the appointments to office were in his hands, and they were made in many cases even without the knowledge of his council. In England, even under the most despotic kings, parliament was always able to curb the power of the Crown by refusing to grant supplies; but this check did not exist in New Brunswick, or in the other colonies of British North America at that time, because the governor had sources of revenue quite independent of the legislature. The British government maintained a customs establishment in



the colonies, which levied duties on all merchandise imported, and over which the legislature had no control. The British government also retained the revenues arising from the Crown lands of the province, and these revenues the governor expended as he pleased. The House of Assembly, therefore, might refuse to vote supplies; but the governor could go on without them, and the only effect of such a procedure was to injure its own officials, and to deprive the people of the money which was expended on roads and bridges.

### THE CHURCH OF ENGLAND

Another feature of the system of government in New Brunswick was the predominant influence it gave to the members of the Church of England. Every member of the council of the province belonged to that denomination, and it was not until the year 1817 that any person who was not an adherent of the Church of England was appointed to the council. This exception was William Pagan, a member of the Church of Scotland, and his was a solitary instance because up to the year 1833, when the old council was abolished, all its other members were adherents of the Church of England. The same rule prevailed with respect to all the great offices in the gift of the Crown. All the judges of the supreme court for the first sixty-seven years of the existence of the province were members of the Church of England. L. A. Wilmot, who became attorney-general in 1848, was the first person not a member of the Church of England who filled that office, and he was the first judge not a member of that Church who sat on the bench of New Brunswick.

For some time after the foundation of the province, the salaries of the Church of England clergymen were paid by the British government, and large grants of land were made for the purpose of supporting the churches. In addition to this, financial assistance was given to them in erecting their places of worship. No dissenting minister was allowed to perform the marriage ceremony, that privilege being confined to clergymen of the Church of England, the Church of Scotland, the Quakers and the Church of Rome. This was felt to be a very serious grievance, and, needless to say, produced a great deal of inconvenience.

Another grievance was the fact that the great offices were held by members of certain favoured families. These families, from their social position and in some cases from their wealth, had the ear of the governor, or of the authorities in England, and were able to obtain and hold all the valuable places. The two Odells, father and son, held the office of provincial secretary for sixty years. The Chipmans were another favoured family, both the father and son being successively judges of the supreme court, and the former receiving large sums from the British government as one of the commissioners who settled the boundary between Maine and New Brunswick. One of the greatest offices in the province—that of the surveyor-general—was held by one person for thirty-three years, and this individual was in no sense responsible to any authority in New Brunswick except the governor. Those in power at that day were very fond of expatiating on the glories of the British constitution and the privileges the people enjoyed under it. But nothing less like the British constitution can be imagined than the system which then prevailed in the British North American colonies.

### THE OFFICIAL CLASSES

One feature which is not to be lost sight of in considering the political condition of the province at that time is the social element. The distinctions between the upper classes and others was then far more marked than it is at present. The officials and the professional men formed a class by themselves, and looked with contempt upon those who were engaged in business. The salaries of the government officials were then three or four times as large as they are at present, and they kept up a corresponding degree of state which others were not in a position to imitate. This assumption of superiority was carried out in all the relations of life, and the sons of those who occupied an inferior station were made to feel their position keenly. This was the case with Lemuel Allan Wilmot, for, although his family was as good as any in the provinces, he was the son of a man who was engaged in business and who was not only a Dissenter but was actually a preacher in the denomination to which he belonged. No doubt

the insults which the son received from those who claimed to occupy a higher station had a good deal to do with his zeal for the cause of Reform, and influenced his future career to a considerable extent.

William Wilmot, although he afterwards failed in business, was in prosperous circumstances when his son Lemuel was born. He was a Baptist and was one of the original members of the Baptist Church at Canning, in Queens County, which was founded in 1800. On Christmas Day, 1813, William Wilmot and nine others received their dismissal from the Canning Church for the purpose of founding a Baptist Church in Fredericton. Wilmot was a local preacher and used his gift of eloquence in that way. He also aspired to legislative distinction, and was elected a member of the House of Assembly for the county of Sunbury in 1816. He was an unsuccessful candidate for the same seat in 1819, and again in 1820. At the general election of 1827 he ran for the county of York, to which he had removed several years before, but was again defeated. This was his last attempt to become a member of the House of Assembly. His loss of three elections out of four had certainly been discouraging, and was in singular contrast to the fortune of his distinguished son, who never experienced a defeat.

#### AS A LAW STUDENT

Lemuel Wilmot's mother died when he was only eighteen months old, so that he never knew a mother's love or a mother's care. But his father early recognized his youthful promise, and gave him all the educational advantages then available. He became a pupil at the College of New Brunswick, which was situated in Fredericton, of which the Rev. Dr. Somerville was the president and sole professor. This college was in fact merely a grammar school, but Wilmot acquired there some knowledge of the classics. However, his scholastic career was not prolonged, for in June, 1825, he entered as a student-at-law with Charles S. Putnam, a leading barrister of Fredericton. He was admitted an attorney of the supreme court in July, 1830, and a barrister two years later. He was then twenty-three years of age.

The men who were contemporaries of Mr. Wilmot as a youth are all dead, and not many anecdotes of his career as a student have been handed down to us. Being of an ardent and ambitious disposition, he took a keen interest in the stirring events that were being enacted around him; for it was a time of great political excitement, and the business troubles of the province increased the difficulties of its inhabitants. In 1825, all the lumbermen in the province were ruined, and the bad management of the Crown lands office which had added to the business difficulties became more than a political question, for by cramping its leading industry it affected the prosperity of every man in New Brunswick. It was then that young Wilmot resolved to enter upon a political career and to do what he could to redress the wrongs from which the people were suffering. Strange to say, at this time he, who afterwards became most eloquent, had an impediment in his speech, which it took much labour to overcome. To improve his knowledge of French, he spent some months with a French family in Madawaska, among the descendants of the ancient Acadians. In this way he acquired a colloquial knowledge of that language.

Wilmot's ambition was to become a public man and to assist in the reformation of the constitution of his native province. He enjoyed many advantages for the rôle he had undertaken. He was tall, his height being upwards of six feet, well proportioned, handsome and striking in his features, and he possessed a voice of great strength and sweetness. He was proficient in all athletic exercises, and took an interest in all those movements which commend themselves to young men of enterprise and force of character. He was a lieutenant in the first battalion of the York County Militia when he was only eighteen years of age, and his devotion to the militia force continued until the end of his life. Possessed as he was of all the elements which make men popular and prominent, he was early marked for advancement in the field that he had chosen for the exercise of his talents.



## CHAPTER II

### EARLY EFFORTS FOR REFORM

THE agitation for an improvement in the constitution of New Brunswick began long before L. A. Wilmot was born. The first man who took a prominent stand for reform in the legislature was Mr. James Glenie, a member for the county of Sunbury from 1792 to 1809. Mr. Glenie, who was a Scotchman and a man of much ability, had been an officer in the Royal Engineers during the Revolutionary War. His efforts to obtain reforms were met by the friends of the governor, Mr. Carleton, with the most violent opposition. He was denounced as an incendiary, and indeed there was hardly a limit to the fierceness with which he was attacked for attempting to bring about an improvement in the system of government. The old Family Compact and their friends were ever ready to tell the public how loyal they were, and to denounce as a traitor any person who presumed to object to the existing state of things. Mr. Glenie was not able to effect anything substantial for the improvement of the constitution, because the time was not ripe for the changes he proposed. England itself was suffering at that time from a relapse from true constitutional methods, so it was not to be expected that much attention would be paid to complaints which came from a remote province of North America.

The cause of Reform would not have been nearly so well supported as it was, had it not been for the fact that the abuses which existed touched the self-interest of many persons who were by no means Reformers at heart, and who in fact cared nothing about responsible government. The first successful attack which was made on the existing order of things was with regard to the fees charged on land grants. These fees went to the various officials, including the governor, and it was shown that on a lot of land not exceeding three hundred acres, the enormous sum of forty-seven dollars was charged as fees, while on a lot of one thousand acres to ten grantees, the fees amounted to about two hundred dollars. The reader will be able to understand from these figures how it was that the officials of the government were able to live in such princely style. This evil was remedied by permission being obtained from the colonial secretary to include a large number of grantees in one grant.

#### THE MARRIAGE QUESTION

Another grievance which was attacked long before Mr. Wilmot entered public life was the law which related to the performance of the marriage ceremony. At that time the only clerical persons authorized to solemnize marriages were the clergymen of the Church of England, ministers of the Kirk of Scotland, Quakers, and priests of the Roman Catholic Church. This was felt to be an intolerable grievance, because it prevented Methodists, Baptists and all Presbyterians except those connected with the Church of Scotland from being married by their own ministers. In 1821 a bill was passed in the House of Assembly authorizing all ministers of the Gospel to solemnize marriages. This was rejected by the council, a fate which befell many subsequent bills of the same kind. For several years the House of Assembly continued to pass the Dissenters' Marriage Bill, and the council as steadily rejected it. Finally, in 1831, the House of Assembly concluded that nothing would serve to bring about the reform asked for but a petition to the king, and accordingly a petition was prepared in which the facts were set forth and His Majesty was asked to give instructions to the administrator of the government to recommend the legislature to pass a bill extending the privilege of solemnizing marriages to all regularly ordained clergymen of dissenting congregations in New Brunswick. In 1832, a bill was passed by both Houses carrying out these views. It contained a suspending clause, however, which prevented it from going into operation until approved by His Majesty. It was thought that this would settle the question, but in 1834 a despatch was received from His Majesty's secretary of state for the colonies in which it was announced that the royal assent had been withheld on the ground that the Act was confined in its operation to four denominations of Christians,—the Wesleyan Methodists, the

Baptists, the Presbyterian seceders from the Church of Scotland, and the Independents. It appeared, therefore, that the Act had been disallowed because it was not liberal enough, but this defect was speedily remedied by the passage of another bill during the session of 1834 in the terms suggested by the colonial secretary, and the Dissenters' Marriage Question was thus settled.

### IMPERIAL CUSTOM DUTIES

It has already been stated that the British government continued to maintain a custom-house establishment in New Brunswick, and to impose duties on goods imported into the province. These duties, which were levied for the regulation of trade, were disposed of by the British government and by the lieutenant-governor of the province with little reference to the wishes of the legislature. The old restrictive system which placed shackles on trade was modified by two Acts passed by the imperial parliament in 1822, under which the importation of provisions, lumber, cattle, tobacco and other articles from any foreign country in North and South America and the West Indies, into ports of British North America and the British West Indies, was allowed under a fixed scale of duty, and a free export was allowed to goods going from all our ports to these countries. The importation of the productions of foreign countries in Europe into the ports of British North America was also permitted, and a schedule of duties annexed. Under these Acts it was provided that the duties on both imports and exports were to be collected by the imperial officers of customs, and the net revenue thus obtained was to be placed at the disposal of the colonial treasuries. This arrangement was a decided gain to New Brunswick, because, for the first time, it placed nearly all the revenue collected by the imperial officers under the control of the legislature.

The Acts of the imperial parliament, 6th George IV, Chapters 73 and 114, went still farther in the way of removing restrictions from colonial trade. These Acts provided that the duties imposed under them should be paid by the collector of customs into the hands of the treasurer or receiver-general of the colony, to be applied to such uses as were directed by the local legislature of such colony, exception being made in regard to the produce of duties payable to His Majesty, under any Act passed prior to the eighteenth year of his late Majesty, George III. This exception is important for the purpose of illustrating the pernicious system under which duties had been collected. Even so late as the year 1833, Messrs. Simonds and Chandler, the New Brunswick delegates to the imperial government, were complaining that duties were collected at the several custom-houses in New Brunswick upon wine, molasses, coffee and pimento under the provisions of the Acts of parliament, 6th George II, Chapter 13; 4th George III, Chapter 15, and 6th George III, Chapter 52, amounting to upwards of one thousand pounds sterling annually, which duties were not accounted for to the legislature, and that it was not known to the House of Assembly by whom and to what purpose these duties were applied. The reply to this on the part of the imperial government was, that in pursuance of the directions contained in the statutes themselves, the duties levied under them were remitted to the exchequer in England in aid of the expenses incurred for the defence of the British colonies in North America. Thus ten years after the British government had undertaken to remit the duties collected in the colonies to the exchequers of the colonies in which the money was collected, there still remained a considerable revenue, obtained under old and obscure Acts of parliament, which was held back, and the destination of which was not known, until disclosed to the delegates sent to England to obtain the redress of New Brunswick's grievances.

But the grievance which caused the greatest amount of dissatisfaction in New Brunswick was that which arose from the management of the Crown lands. It was bad enough that the revenues arising from the public domain should be disposed of without the consent of the legislature; but it was still worse when such regulations were made by the surveyor-general as hindered the settlement of the country and interfered with one of its leading industries. One great abuse was that large areas of the best land in the province were locked up as reserves for the production of masts for His Majesty's navy. Another grievance was the imposition of a duty of a shilling a ton on all pine timber cut in the

province. This was done by the authority of the surveyor-general, and its effect was seriously to injure many of those who were engaged in lumbering. This tax was remitted for a time after the panic of the year 1825, but it was revived when that crisis in the commercial life of the province had passed. The management of the Crown lands office had been the subject of criticism at almost every session of the legislature for twelve or fifteen years before Lemuel Wilmot entered public life, and every year the complaints grew louder.

#### AN ADDRESS TO THE KING

At the session of 1831, an address was presented to the president, the Hon. William Black, asking him to lay before the House a detailed account showing the amount of the casual and territorial revenue from the beginning of 1824 to the end of 1830, and the expenditures from that fund for the same period. This was refused on the ground that it was inconsistent with his instructions. The House then resolved to bring the matter to the notice of the king in an address, the spirit of which may be gathered from the following paragraphs:—

"By the operation of the system practised in this office, very large sums are taken from the people of this province for licenses to cut timber on Crown land, and, although the assembly do not question the right Your Majesty undoubtedly has to the lands in question, they think the tremendous powers with which the commissioner is vested, with regard to impositions of tonnage money and the enormous exactions for fees, to be incompatible with a free government, and to require redress.

"It is generally understood, as well as universally believed, that the commissioner in question is under no control in this province, and to this may be ascribed the mode in which licenses to cut timber are issued in very many cases, in quantities less than one hundred tons, subject to a duty of one shilling, three pence per ton, and the excessive fee on each of forty-five shillings. By this mode, a large part of the receipts is paid in the shape of fees, at once injuring the subject without benefiting the revenue; and the assembly feel convinced, if the office were under colonial management, that while the oppressions would be removed, the revenue would be more productive; and besides, the assembly cannot but view with just alarm that the day may possibly come when, by a single mandate from the office, exactions of such magnitude may be made as literally to stop the export trade of the country, a power which no person should have even the shadow of authority to exercise.

"The assembly at an early day in the present session, by an address to the administrator of the government, sought for documents regarding this office, to enable them officially to bring the subject more in detail under the consideration of Your Majesty, but this information, so highly desirable and necessary, has been withheld from them; and the assembly, therefore, with great submission, lay before Your Majesty herewith, a copy of the said address, with the reply thereto, for Your Majesty's gracious consideration.

"It will by that be seen that the objects contemplated by the assembly are no less than relieving Your Majesty's government permanently from the burthen of the whole civil list of the province, a subject which the assembly humbly conceive to be of great advantage to the parent state, and only requiring that the revenues, from whatever source or sources derived in or collected within the province, should be placed under the control of its legislature."

#### THE CIVIL LIST

A portion of the Crown-land revenue went to pay what was termed the civil list, which included the salaries of the lieutenant-governor, the judges, the attorney-general, solicitor-general, private secretary, provincial secretary, auditor, receiver-general and commissioner of Crown lands. The latter official received seventeen hundred and fifty pounds sterling per annum besides enormous fees, so that his income was greater than that of the lieutenant-governor. Thomas Baillie, an Irishman, who had been a subaltern in a marching regiment, had filled that office since the year 1824, and continued to hold it until 1851, twenty-seven years in all, when he retired with a pension twice as large as the salary of the present surveyor-general of New Brunswick.

What the Reformers in the legislature of New Brunswick sought to obtain was the control of the public lands, and the disposal of the revenues derived from them. To accomplish this they were willing to undertake to pay the salaries embraced in the civil list, although these salaries were looked upon by the people of the province generally as altogether too large. Yet there were great difficulties in the way of this necessary reform, for King William IV was known to be violently opposed to it. At a later period, 1835, in the course of a conversation with the Earl of Gosford, who had been appointed governor of Lower Canada, "I will never consent," he said with an oath, "to alienate the Crown lands, nor to make the council elective. Mind me, my Lord, the cabinet is not my cabinet. They had better take care, or by – I will have them impeached."

Such was the language which this king used in regard to his constitutional advisers. It was fortunate for New Brunswick and the other colonies of British North America that at that time he had done his utmost to get rid of his ministers and had been defeated and humiliated, so that they could set him at defiance. But in 1832 they were more disposed to defer to his wishes, and in May of that year we find Lord Goderich, the colonial secretary, writing to Sir Archibald Campbell, the lieutenant-governor of New Brunswick, in the following strain:—

"The preservation to the Crown of the territorial revenue is an object of the first importance, and it would only be resigned on its being clearly proved that the right of the Crown could not be maintained without producing still greater inconvenience. You cannot, therefore, more usefully exert your influence than in endeavouring to prevent the assembly from urging the surrender of this revenue."

#### CONTROL OF THE REVENUE

The question of the control of the Crown-land or casual and territorial revenues was made the subject of an address to the king by the House of Assembly in 1832. In this it was stated that the expense of collecting these revenues was far greater than it would be under proper management, and it was proposed that they be placed under the control of the legislature, which would undertake the payment of all the necessary expenses of the civil government of the province by making such permanent and other grants as might be necessary for this purpose. The reply to this proposition was received during the legislative session of 1833. In it Lord Goderich, with some appearance of sarcasm, observed that "His Majesty did not consider it necessary at present to call upon the House for a grant of the nature proposed, as he did not anticipate such a falling off in the revenue at his disposal as the House appeared to have apprehended." This reply can hardly be regarded otherwise than as an insult to the House of Assembly, for the meaning of their address to the king was deliberately misrepresented. They were contending for a principle, that the revenue derived from the public domain should be under the control of the legislature, and the amount of the revenue did not enter into the question.

In 1833 the House of Assembly appointed a committee on grievances for the purpose of taking into consideration and investigating all matters in connection with the Crown lands, which were the subject of complaint. After this committee had reported to the House, it was resolved to send a deputation to England to endeavour to make some arrangement with the colonial secretary in reference to the Crown lands.

#### MR. STANLEY'S DESPATCH

The deputies appointed to proceed to England and lay the grievances of the province at the foot of the throne were Charles Simonds and Edward B. Chandler, both men of wealth, influence and position, and well qualified for the performance of the work with which they were entrusted. Messrs. Chandler and Simonds arrived in England in June, 1833, and immediately placed themselves in communication with the Right Honourable E. G. Stanley, who was then colonial secretary. Their report was laid before the legislature in February, 1834, and the result was highly satisfactory to the House of Assembly. A few days later a despatch from Mr. Stanley to Sir Archibald Campbell was laid before the House, in which he stated the terms on which he should feel that His Majesty might

properly be advised to place the proceeds of the casual and territorial revenue under the control of the assembly of New Brunswick. He would, he said, be prepared to advise His Majesty to accept a permanent appropriation by the legislature, duly secured to the amount of fourteen thousand pounds per annum, and that the Crown should undertake to charge on any such permanent grant the salaries of the lieutenant-governor, his private secretary, the commissioner of Crown lands, provincial secretary, chief-justice, three puisne judges, the attorney-general, auditor, receiver-general, the expenses of the indoor establishment of the Crown lands department, and a grant of one thousand pounds to the college. It would be necessary, Mr. Stanley stated, that any bill passed in consequence of the proposal contained in this despatch should contain a suspending clause in order that it might be submitted to His Majesty before it was finally assented to. It was also stated, in order to prevent misunderstanding or delay, that the House should be apprised, that, unless some other fully equivalent and sufficient security could be devised, it would be expected that the Act should provide that the stipulated annual commutation should be payable out of the first receipts in each year, and that in case of any default in such payment the whole of the revenue surrendered should revert to the Crown. A committee was appointed to prepare the bill on the subject of the surrender by His Majesty of the casual and territorial revenues of the province. The House of Assembly had previously passed a resolution that the sum of fourteen thousand pounds required by His Majesty's government as a permanent grant for the surrender of the casual and territorial revenues of the province was greater than the charges contemplated to be thereon required, yet that the great desire of the House of Assembly to have this important subject finally settled should induce them to accept the proposal contained in Mr. Stanley's despatch. On the day after this resolution was passed, the lieutenant-governor communicated to the House of Assembly an extract from a despatch received the previous day by him from the Right Honourable Mr. Stanley, dated January 4th, 1834. This extract was as follows:—

"In your message communicating to the assembly the proposal contained in my despatch of the 30th September, you will take care distinctly to explain that the payments expected from the New Brunswick Land Company are not included in the revenue which is offered to the acceptance of the assembly." It is with great regret that an historian of this period must record the receipt of such a despatch from an imperial head of department to a colonial governor, for the spirit displayed in the message was not that of an enlightened statesman, but such as might have been expected from one who was endeavouring to drive the hardest possible bargain with the province of New Brunswick, in order that a number of officials, swollen with pride and enjoying enormous salaries, might not suffer.

#### NEGOTIATIONS FAIL

A few days after the receipt of this despatch, a resolution was passed by the House in committee, regretting that the additional condition contained in Mr. Stanley's last despatch would prevent the committee recommending to the House further action in the matter of preparing a civil list bill. Thus ended the attempt to settle this vexed question in the year 1834. The House of Assembly, however, still continued to agitate the matter, and to make Sir Archibald Campbell's life a burden to him. On March 7th, they addressed him, asking for accounts in detail of the casual and territorial revenues, and calling for a number of statements which they had not received except in such a shape that they could not be properly understood. They also addressed His Excellency, requesting him to lay before them copies of all official despatches transmitted to him by the secretary of state for the colonies, since he assumed the administration of the government, relating to the subject of the casual and territorial revenues. The reply of His Excellency to the request for more detailed accounts was a courteous one; but while he consented to furnish the accounts requested in detail, it was with the understanding that his compliance was not to be considered as a precedent. He declined, however, to give the names of the parties who had their timber seized or forfeited, or the names of the petitioners for Crown land. He also refused to furnish the accounts of the receiver-general and commissioner of Crown lands, on the ground that they were accounts exclusively between these officers and the Crown.

With regard to the request for his correspondence with the colonial secretary, Sir Archibald Campbell in another message gave a tart refusal, stating that such a request was subversive of the principles and spirit of the British constitution, and that he would ill deserve the confidence put in him by His Majesty were he to hesitate in meeting so dangerous an encroachment, not only on the independence of the executive, but the prerogatives of the British Crown, with a most decided and unqualified refusal. This military officer considered himself a proper exponent of the principles and spirit of the British constitution. He failed to understand that the British constitution rests upon the support of the people, while his system of government was intended to ignore the people altogether.

#### QUARREL WITH THE GOVERNOR

A few days after the receipt of this message, a resolution was passed by the House of Assembly declaring that the language used by the lieutenant-governor, in his reply to the address of the House, was at variance with all parliamentary precedent and usage, and such as was not called for by the address. Some of the governor's friends attempted to weaken the force of this resolution by an amendment of a milder nature, but their amendment was defeated, and the resolution carried by a vote of fifteen to eight. Another address on the subject of the casual and territorial revenues and civil list was prepared and passed by the assembly for the purpose of being forwarded to His Majesty. It recited the proceedings, in regard to the matter, which had taken place already, and the desire of the House of Assembly to accept the proposition contained in Mr. Stanley's despatch, and expressed the regret of the House at the new condition imposed with regard to the New Brunswick Land Company, which made it impossible to accept the settlement as amended. The House concluded by expressing the hope that the terms proposed in the original despatch might yet be considered definitive, and that the proviso with regard to the New Brunswick Land Company might be withdrawn. This was transmitted to England; but, before the year ended, Sir Archibald Campbell concluded to rid himself of the House of Assembly, which had given him so much annoyance, and accordingly it was dissolved early in November; so that when the legislature met again in January, 1835, the House was a new one, although largely composed of the old members.

## CHAPTER III

### WILMOT IN THE LEGISLATURE

WILMOT acquired a good legal practice soon after his admission to the bar, and was recognized as a highly successful advocate in cases before a jury. In the opinion of the legal profession he never was a deeply read lawyer, either as a barrister or as a judge, but in the conduct of a case at *nisi prius* he could hardly have been surpassed. He had the gift which has been possessed by all great advocates, of seizing on the leading feature of a case, and, regardless of all minor issues, pressing it home on the minds of the jury. His eloquent and impressive speeches on behalf of his clients soon began to attract general attention, and the court-house was thronged when it was known that he was about to address a jury. He was speedily marked as the proper person to represent the views of the people in the House of Assembly, and, on a vacancy occurring in the representation of the county of York in consequence of the death of one of the members in the summer of 1834, Wilmot was elected without opposition, none of the government party having the courage to oppose him. Before the time came round for the meeting of the legislature, the House was dissolved by Sir Archibald Campbell, in the hope that he might be able to get an assembly more amenable to his wishes, and, at the general election which followed, Wilmot was again elected, at the head of the poll. At that time he had barely completed his twenty-fifth year. It was a great triumph for Wilmot and the friends of Reform, for all the influence of the friends of the governor and the Family Compact was arrayed against him.

#### ENTERS THE LEGISLATURE

Mr. Wilmot took his seat as a member of the House of Assembly on January 25th, 1835. Young as he was, he had already made a great reputation as a public speaker, and there was no man in the legislature or in the province who could stand any comparison with him in point of eloquence. Indeed, it is doubtful whether the British North American provinces have ever produced a man who was Wilmot's superior in that style of oratory which is so telling on the hustings or where great masses of men are to be moved. The evidence of this fact does not rest on the testimony of his countrymen alone, for he acquired a wider fame for eloquence than they could give him. At the Portland Railway Convention of 1850, where the ablest men of the Northern States were gathered, he easily eclipsed them all by his brilliant and powerful oratory. The reporters are said to have thrown down their pencils in despair, being unable to keep pace with him as he aroused the enthusiasm of all who heard him by his burning words. Unfortunately, there is no form of ability which is so transient in its effects as this perfervid style of oratory. So much of its potency depends on the action of the speaker, on the glance of his eye and the modulation of his voice, that no report could do justice to it, even if there had been reporters at that time capable of putting down every word he uttered. The speeches of even Gladstone, when reported word for word, read but indifferently when seen in cold type, and no speech of Wilmot's was ever properly reported. He was incapable of writing out a speech after he had delivered it, so that we must take the united testimony of his contemporaries, whether friends or enemies, that he was, upon his own ground, an unequalled speaker.

The House in which he now found himself was not one that was remarkable for its eloquence. Unlike most of the legislatures of the present day, the proportion of lawyers was very small, there being only five in a House of thirty members, and of these five the only one who was an orator was Wilmot. The other twenty-five members were mostly business men and farmers, some of whom could express their views on public questions clearly enough, but had no pretensions to eloquence. Yet it was a good House, and one of its best features was that its members were able to appreciate the worth of the new representative from the county of York.

The aim of Wilmot, when he entered the legislature, was to bring the province into line with the principles of responsible government as understood in the mother country. Yet, looking at the state of



New Brunswick then, it is easy to see that the task he had undertaken was one of enormous difficulty. Most of the evils of which the people had been complaining still existed. The casual and territorial revenue was still under the control of the home authorities, the custom-house establishment still remained unreformed, the Family Compact still controlled all the great public offices, and none but members of the Church of England were thought worthy to serve their country in a public capacity.

Two years earlier the executive and legislative councils had been separated; but the change had made little or no improvement in the system of government. The executive council consisted of five members, all of whom held public offices from which they could not be removed by any act of the legislature. The first on the list was Baillie, the surveyor-general, whose record has already been referred to; next came F. P. Robinson, the auditor of the king's casual revenue; another was William F. Odell, whose father had been provincial secretary for twenty-eight years, and who himself filled the same office for thirty-two years. George F. Street, the solicitor-general, was another member of the executive, and the last on the list was John Simcoe Saunders, who was advocate-general and held three or four commissionerships besides. All these men were so solidly entrenched in their positions that it seemed impossible they should ever be disturbed. They formed a solid phalanx opposed to all reform, and they were supported by the governor, Sir Archibald Campbell, most of whose life had been spent in India and who, however well fitted to govern Hindoos, was hardly the man to give laws to white men who claimed to be free.

#### BECOMES A LEADER

As soon as Wilmot entered the House of Assembly, he began to take a leading part in its debates. The very day he took his seat he was appointed on the committee to prepare an address in reply to the speech from the throne. On the following day he gave notice of a resolution with regard to the boundary between Maine and New Brunswick, a subject that was then coming to the front. A day or two later he brought in a bill to continue the Act to provide for the expenses of judges on circuits. Indeed, no man was more active during that first session than the new member for the county of York.

There were two questions that came up for discussion in which, as a Reformer, he was specially interested,—the salaries of the customs establishment, and the casual and territorial revenue. With regard to the latter, when the House had been sitting about a month, the reply of the colonial secretary to the address of the previous session was laid before it. That address, it will be remembered, related to the offer which had been made to the British government to take over the Crown lands and provide for a civil list of fourteen thousand pounds sterling, the payments expected from the New Brunswick Land Company to be included in this arrangement. The reply of the colonial secretary was as follows:

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"From various parts of the address I infer that the proposal conveyed to the assembly, through my predecessors, must have been misapprehended in more than one important particular; and I have especially remarked the erroneous assumption that, in offering to surrender the proceeds of the Crown lands, it was intended also to give up their management, and to place them under the control of the legislature.

"From the course of their proceedings, as well as the tenor of the present expression of their sentiments, the assembly must be understood to consider it an indispensable condition that the payments of the Land Company should be comprised among the objects to be surrendered to them. This is a condition to which His Majesty's government cannot agree. His Majesty's government would also be unable to recognize the interpretation which was placed on their former offer, so far as regards the control over the lands belonging to the Crown in New Brunswick. Under these circumstances, I can only desire you to convey to the assembly His Majesty's regrets that the objects of their address cannot be complied with, and, adverting to the wide difference between the views entertained by the government and those manifested by the assembly on this subject, it seems to me that no advantage

could be anticipated from making any further proposals at present respecting the cession of the territorial revenue."

### RENEWED AGITATION

This despatch, which brought a sudden close to the negotiations with regard to the casual and territorial revenues of the province, did not emanate from the government with which the House of Assembly had been previously negotiating, but from a new administration which had just been formed under the premiership of Sir Robert Peel, and which lasted just one hundred and forty-five days. The creation of this administration was due to the action of King William IV, in dismissing his advisers on the death of Earl Spencer, which removed Lord Althorp from the House of Commons. The king had grown to detest his cabinet for their reforming spirit, but his designs were thwarted by the failure of Sir Robert Peel to form an administration capable of facing the House of Commons. As a consequence, Viscount Melbourne again became premier, and a renewal of the negotiations with the government in regard to the casual and territorial revenues was rendered possible.

The House of Assembly was still determined to keep the question of the casual and territorial revenue to the front, and at a later period in the session another address on this subject was prepared by the House of Assembly, to be laid before His Majesty. In this address the grievances with regard to the management of the Crown lands of New Brunswick were recited, and the willingness of the legislature to provide for the civil establishment of the province was stated. The address urged the benefits that would result to the people of New Brunswick from placing the net proceeds of the Crown-land revenues under the control of the legislature. Attached to this address was a schedule of salaries proposed to be paid out of the casual and territorial revenues, amounting in all to £10,500 currency. The address was transmitted to the governor to be forwarded to His Majesty. No specific answer was ever made to this proposal, a fact which was probably due to the confusion, incident to the change of government, which took place about the time the address reached Downing Street.

### CUSTOM-HOUSE SALARIES

Another matter which engaged the attention of the House during this session, and in which Wilmot took an active interest, was the settlement of the salaries of the custom-house officials. Although the surplus revenue from this source went into the provincial treasury, the amount thus received was much less than it ought to have been, in consequence of the large salaries which were paid to the officials. In the year 1830 the amount of custom-house duties collected in the province was £16,616 18s. 11d. sterling, from which was deducted for salaries £7,073 6s., or nearly one-half of the whole amount. The House of Assembly objected to the payment of such large salaries, and in 1831 proposed to the British government to make a permanent annual grant of £4,250 sterling for the payment of customs officials in New Brunswick. This proposal was accepted, and in the following year a bill was passed in accordance with this arrangement. But it was protested against by the customs authorities in England and disallowed because the salaries of the officers of customs were not made the first charge on the revenue. During the session of 1835, an amended bill embracing this provision was passed, and the question was settled for the time. Mr. Wilmot was not satisfied with this arrangement, because it was a violation of the principle that the House of Assembly should have control of the provincial revenue, and he therefore voted against it. Nevertheless, the measure apart from this violation of a fundamental principle, was a gain to the province, as it placed a considerable sum additional in the public treasury.

## CHAPTER IV

### WILMOT AS A DELEGATE TO THE COLONIAL OFFICE

MR. WILMOT took a very active part in the proceedings of the legislature during the session of 1836, and was the moving spirit in the committee of the whole to inquire into the state of the province during that session. The result was the passing by large majorities of a series of twenty-six resolutions condemning the management of the Crown lands office, the composition of the executive council and also of the legislative council, and declaring that the control of the casual and territorial revenues should be placed in the hands of the legislature. These resolutions were made the basis of an address to His Majesty, which was to be carried to England by a deputation of two members of the House of Assembly. This address relates at length the principal facts of the management of the Crown lands and the reasons of the House of Assembly for dissatisfaction therewith. Mr. Wilmot, in recognition of the active part he had taken in this business, was appointed a member of the delegation, the other member being William Crane of Westmorland, a gentleman of experience, wealth and standing in the province. This appointment was the highest compliment that could possibly have been paid to Wilmot's capacity, for the negotiation then to be conducted with the colonial office was of the most important and delicate character, and one which vitally affected the interests of the province.

The colonial secretary at that time was Lord Glenelg, a statesman whose character has been drawn by Sir Henry Taylor, who was then a clerk in the colonial office. "Amiable and excellent as he was," says Taylor, "a more incompetent man could not have been found to fill an office requiring activity and ready judgment. A dart flung at him by Lord Brougham in 1838 points to his notorious defect as a minister called upon to deal with a crisis. The then crisis was that of the Canadian Rebellion." "It is indeed," said Lord Brougham, "a most alarming and frightful state of things, and I am sure must have given my noble friend many a sleepless day." It was probably because of Lord Glenelg's habit of procrastination that the delegates had to remain in London for four months before they were able to bring their business to a conclusion. They arrived there about the middle of June, and it was well on in October before they were able to leave. The result of their work was that an arrangement was made satisfactory both to the British government and to the delegates representing the House of Assembly, by which the casual and territorial revenues were to be transferred to the province, in consideration of the legislature undertaking to provide for a civil list of £14,500 currency annually, for the payment of certain salaries chargeable to that fund. A draft of a Civil List Bill was prepared and agreed to by the lords of the treasury, and the understanding was that this bill should be passed by the legislature, and receive the assent of the lieutenant-governor, when it would immediately become operative.

#### CIVIL GOVERNMENT BILL

The first clause of this bill transferred the proceeds of the territorial and casual revenues, and of all woods, mines and royalties which had been collected and were then in hand, or which should thereafter be collected, to the provincial treasurer, who was authorized to receive them for the use of the province, while the Act remained in force. The second clause charged the revenues with the payment of £14,500 for a civil list. The third clause enacted that all the surplus over and above the sum of £14,500 currency, should remain in the treasury of the province until appropriated or disposed of by an Act or Acts of the general assembly. The fourth clause gave the lieutenant-governor, with the advice of his executive council, power to expend such sums as they might deem necessary for the prudent management, protection and collection of the said revenues, a detailed account of which was to be laid before the legislature within fourteen days of the commencement of each session, with all vouchers for the same. It was also enacted that all grants or sales of Crown lands should be void, unless the land had been sold at public auction after due notice in the *Royal Gazette*. By this

arrangement the House of Assembly had obtained the boon for which it had so long been contending, but there was still one more obstacle to be overcome,—the opposition of the lieutenant-governor, Sir Archibald Campbell, who had entered into a plot with some of the enemies of freedom in the province for the purpose of thwarting, not only the wishes of the House of Assembly, but also the intentions of the home government. As soon as Sir Archibald Campbell was apprised of the intention of His Majesty's advisers in England to transfer the casual and territorial revenues to the provincial legislature, he commenced a correspondence with the colonial office, pointing out what he deemed to be imperfections in the scheme which they had prepared for the management of the public lands. He pretended to have discovered that there was some error in the calculation of the lords of the treasury with regard to the sum to be paid in lieu of the civil list, and that the amount of £14,500 currency would not be sufficient to defray all the expenditures chargeable on the civil list.

#### AN OBSTRUCTIVE GOVERNOR

Sir Archibald Campbell, soon after the opening of the session of the legislature, in December 1836, requested the House of Assembly to add a suspending clause to any Civil List Bill they might pass, so that he might forward it to the home government for their approval. As this was entirely contrary to the understanding which had been reached between Messrs. Wilmot and Crane and the colonial secretary,—it being understood that the bill if passed in the form agreed upon would be immediately assented to by the lieutenant-governor,—the House of Assembly very naturally refused to comply with Sir Archibald's wishes. He, however, held firm in his resolution, and the Civil List Bill which had been agreed to by the home authorities, after being passed by both Houses, did not receive his assent. At the close of the session, while the matter was under discussion, at the instigation of the lieutenant-governor one of the executive council, Solicitor-General Street, was sent on a secret mission to Downing Street. The object of this mission was to make such representations to the home authorities as would induce them to delay giving their assent to the Civil List Bill. The truth of the matter seems to have been that Sir Archibald Campbell and his advisers in New Brunswick thought if they could only gain time the Liberal government of England which had granted such favourable terms to the province might be defeated, and a Tory government come into power which would speedily undo all that their predecessors had done, and refuse to grant any concessions to the legislature of New Brunswick. There was great excitement in the province in consequence of the action of the lieutenant-governor, and this excitement was fairly voiced in the House of Assembly, where an address was prepared representing the condition of affairs to His Majesty, and detailing the manner in which the lieutenant-governor had sought to thwart the intentions of the imperial government. This address was passed by a vote of twenty-seven to two, the only members of the House who ventured to stand with the man who occupied Government House being John Ambrose Street and William End.

#### CIVIL GOVERNMENT BILL PASSED

Messrs. Crane and Wilmot were again appointed a deputation to proceed to England with the address of the House of Assembly, and took their departure two days after it was passed, amidst great popular demonstrations by the citizens of Fredericton. The legislature was prorogued on March 1st, on which day the House of Assembly again requested the lieutenant-governor to pass the Civil List Bill, pointing out that under the arrangements made with the colonial office it was his duty to do so, but their request fell upon deaf ears. In the speech proroguing the legislature, Sir Archibald Campbell stated that he had withheld his assent from this bill because a suspending clause had not been appended to it. These were the last words that this obstinate governor was destined to speak before a New Brunswick legislature. Finding that all his hopes of impeding the progress of the province in the direction of political liberty were in vain, he tendered his resignation to save himself from being removed, as he would have been, for his direct disobedience to the commands of his

superiors in England.<sup>1</sup> Sir John Harvey, another soldier, but a man of a very different spirit, was appointed to succeed him as lieutenant-governor. The Civil List Bill was again passed at a special session of the legislature and received the assent of the governor, becoming law on July 17th, 1837. From that time to the present, the province of New Brunswick has controlled the revenues which it derives from its Crown lands and similar sources, and, whether wisely expended or not, the people of this province have at least the satisfaction of knowing that the money is appropriated by their own representatives, and by a government which is responsible to them for its actions.

The death of King William IV took place during the summer of 1837, and brought about another general election. Mr. Wilmot again stood for the county of York and was returned at the head of the poll. This was only a proper recognition of his eminent services to the province in the legislature and as a delegate to England. At this election, Charles Fisher, a young lawyer, was also returned for the county of York. Mr. Fisher, although not so fluent a speaker as Wilmot, was second to no man in the legislature in devotion to Liberal principles, and he proved a most valuable lieutenant in the battle for responsible government which now began. The contest for the control of the Crown lands of the province had been won, but a still more difficult task remained for the friends of constitutional principles to accomplish,—the making of the executive responsible to the people. The members of the House of Assembly had been almost unanimous in demanding the control of the Crown lands, but, when it came to applying the principles of responsible government to the affairs of the province generally, there were many deserters from the ranks of those who had called themselves Reformers. This was partly due to the principles of responsible government not being well understood even by some members of the legislature, and partly to the fact that the question did not touch the self-interest of the members in the same manner as the mismanagement of the Crown lands department had done.

Under a thoroughly constitutional system of government the initiation of money grants would have been in the hands of the executive, but in 1837 not a single member of the executive council had a seat in the House of Assembly. Three of the five members of the executive council were also members of the legislative council, but the two others had no seat in either House, a fact which shows on what lax principles the executive was constructed. The initiation of money grants being in the House of Assembly, any private member had it in his power to move an appropriation of money for any object that he pleased. In this way a system of "log rolling" was inaugurated in the legislature, which resulted in extravagant expenditures and the appropriation of money for objects which, under a better system, would not have received it. It was impossible to put any check upon the expenditure or to keep it within the income under such an arrangement, and one of the first efforts of the Reformers was therefore directed to the removal of this abuse. Unfortunately this was, of all the proposed reforms in the constitution, the one most difficult to carry, and it was not accomplished until after Wilmot had retired from public life.

#### KING'S COLLEGE

One of the subjects which engaged the attention of Mr. Wilmot, at an early period of his legislative career, was the charter of King's College. This charter had been obtained in 1828 from His Majesty, King George IV, and the legislature had granted the college an endowment of eleven hundred pounds currency a year, in addition to ten hundred pounds sterling granted by the king out of the casual and territorial revenues of the province. The aim of the charter was to make the college a Church of England institution exclusively, for it provided that the bishop of the diocese should be the visitor of the college, and that the president should always be a clergyman in holy orders of the United Church of England and Ireland. No religious test was required of students matriculating or taking degrees in arts, but the council of the college, which was the governing body, was to be composed of members of the Church of England, who, previous to their appointment, had subscribed to the thirty-

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<sup>1</sup> This is shown by the correspondence of Sir John Harvey with the colonial office. Sir John was then governor of Prince Edward Island.

nine articles. The professors, to the number of seven, who were members of the Church of England, were to be members of the council, so that, although no religious test was required of them, it was reasonably certain that none but persons of that denomination would be appointed to professorships. These terms were much complained of, and surely it was absurd to place a provincial college under the control of a single denomination which could not claim more than one-third of the population of the province as belonging to its communion. It is stated in Fullom's *Life of Sir Howard Douglas*, who was lieutenant-governor of the province at the time, that the charter would have been much less liberal than it was if it had not been for his efforts. The Bishop of Nova Scotia and the Bishop of London desired to confine it entirely to students belonging to the Church of England, and to make subscription to the thirty-nine articles a condition precedent to the granting of degrees in arts. On the other hand, Attorney-General Peters in 1845, when the amendments to the charter were discussed in the legislative council, stated that the charter as originally drafted and sent to England was much more liberal in its provisions than when finally passed, but that in 1828, to the surprise of Sir Howard Douglas, the then existing charter came out copied from one obtained by Dr. Strachan for Upper Canada. If this statement was correct, it affords a singular illustration of the injury that the bigotry of one man can cause to future generations. If King's College had treated all denominations on equal terms, all would have resorted to it for higher education. As it was, it became the college of only a section of the people, the different denominations established colleges of their own, and when finally the connection between the Church of England and King's College was severed and it became the University of New Brunswick, the denominational colleges had become so well established that it could hardly compete with them on equal terms.

#### AN EXCLUSIVE INSTITUTION

During the session of 1838 Mr. Wilmot, as chairman, submitted to the legislature the report of the select committee which had been appointed to take into consideration the state of the college. In this report it was proposed to make certain alterations in the charter for the purpose of rendering it more acceptable to those who were not in the communion of the Church of England. In 1839 he introduced a bill in the House of Assembly embracing these amendments. The principal changes were to make the lieutenant-governor visitor of the college instead of the bishop, to repeal the section which provided that the president of the college must be a member of the Church of England, and to make persons of every denomination eligible for members of the college council. The professorship of theology was still retained, and students in that course were still required to subscribe to the thirty-nine articles, while services were held in the college morning and evening according to the rites of the Church of England. These changes were certainly of a very moderate character, but they were stoutly resisted by the college authorities and their friends. They put forward the plea that the legislature had no right to alter a royal charter, that to do so was an interference with the royal prerogative, and that the direst consequence would ensue if the constitution of the college was changed. According to their view, a royal charter once granted, the king himself, even with the assistance of both branches of the legislature, could not amend it. The college authorities also denied that they were under the control of the legislature in any way, or responsible to it for their management of the institution, although they were living on money voted by the legislature for its support.

#### ADDRESS TO THE QUEEN

Wilmot's bill passed the House of Assembly, but was defeated in the legislative council. A similar bill was introduced by him in 1840, but postponed in consequence of a communication from the college council which seemed to show an inclination to yield something to the demands of the public. But a fatal objection to these modifications being accepted was the insistence of the college council that the bishop of the diocese, or in his absence the archdeacon, should be a member of that body. Representatives of the Presbyterians, Methodists and Baptists pointed out in a memorial to the lieutenant-governor that the exclusive character of the council would still remain, as that body would

be composed wholly of members of the Church of England. Lord John Russell, the colonial secretary, to whom the matter had been referred, suggested that the college should surrender its charter and that a new one should be prepared embracing the proposed changes, but the college council took no steps to carry these suggestions into effect. This being the case, at Wilmot's instance the House of Assembly proposed an address to the queen setting forth the facts of the case and asking Her Majesty to assent to a bill, a draft of which was enclosed, which the House of Assembly was prepared to pass.

At the session of 1842 Wilmot again introduced the King's College Bill, and it was passed by the House, but again rejected by the legislative council. Early in the session of 1843, the lieutenant-governor communicated to the House by message two despatches from Downing Street on the subject of the college. One of these was from Lord John Russell, and the other from his successor, Lord Stanley. Lord John laid down the doctrine that "it is a principle of undoubted validity that a grant of franchise by the Crown is irrevocable and unalterable by a further exercise of the royal authority unless the power of revocation and change be embodied and reserved in the original grant, or unless the grantees make a voluntary surrender of their franchises." Lord John had evidently forgotten his English history, or he would have known that English kings on many occasions had revoked charters granted by themselves or their predecessors.<sup>2</sup> Lord John desired the college to surrender its charter and accept a new one, but Lord Stanley and the law officers of the Crown whom he had consulted held a different view, and thought that a new charter could be granted to supersede the old. Both colonial secretaries were desirous that the changes in the constitution of the college should be effected by a new royal charter. But this did not suit the views of the House of Assembly, and after another college bill had been defeated in the House and rejected by the council, on March 20th, 1843, the following resolution, which was moved by Mr. Wilmot, was passed by the House without a division:—

"Whereas, The assembly, during several years past, have endeavoured, without success, to effect certain reasonable modifications in the charter of King's College; and whereas those modifications as contained in the bill which has been rejected by the legislative council, during the present session, have been loudly and repeatedly called for by numerous petitions from nearly every county in the province, while no petition has ever been presented against those modifications; and whereas it is in vain to expect the amount of public benefit from the institution which its munificent endowment from the provincial revenue should ensure; therefore,

"*Resolved*, That this House have learned with much regret and disappointment that a majority of the legislative council have rejected the said bill during the present session; and further

"*Resolved*, That this House should persevere in their endeavours to amend the said charter by legislative enactment, and not resort to an address to the throne for a new charter; and that this House will steadfastly adhere to the principle that all the educational establishments of the province, which are endowed from the colonial revenues, whether incorporated by royal charter or otherwise, should be at all times subject to the supervision of the local legislature."

#### COLLEGE CHARTER AMENDED

This resolution embodied a great principle to which the House of Assembly was determined to adhere, and which was very soon carried out. In 1844 the college amendment bill was again rejected by the council, but this was the last effort of that reactionary body to defeat the wishes of the people. At the session of 1845, the college bill was again introduced by Mr. Wilmot, and this time it passed both Houses. But like many important bills of that day it was reserved for Her Majesty's pleasure and although passed in March, 1845, it was not until December, 1846, that it received the royal assent and became law.

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<sup>2</sup> Charles II annulled the charter of Massachusetts, and disposed in a similar fashion of the charter of the city of London, as well as of many English towns.



## CHAPTER V

### LORD JOHN RUSSELL ON TENURE OF OFFICE

IN the session of 1840 Sir John Harvey, the lieutenant-governor, communicated to the legislature a despatch which he had received from Lord John Russell a short time before. This dealt with the question of the tenure of public offices in the gift of the Crown throughout the British colonies. Lord John had been struck by the fact that, while the governor of a colony was liable to have his commission revoked at any time, the commissions of all other public officials were very rarely recalled except for positive misconduct. In New Brunswick offices had been held generally for life and sometimes for two lives, as was the case with the Odells, father and son, who filled the position of secretary of the province for sixty years. One attorney-general of the province had held office for twenty-four years, another for nineteen years and a third for twenty years. One surveyor-general held office for thirty-three years and another for almost thirty years. Under such a system, it was clear that responsible government could make no advance, for these officials held their positions quite independently of the wishes of the legislature. Lord John Russell thought that the time had come when a different course should be followed, and his despatch was for the purpose of announcing to the lieutenant-governor the rules which would hereafter be observed in the province of New Brunswick. He said:—

"You will understand, and cause it to be made generally known, that hereafter the tenure of colonial offices held during Her Majesty's pleasure will not be regarded as equivalent to a tenure during good behaviour, but that not only such officers will be called upon to retire from the public service as often as any sufficient motives of public policy may suggest the expediency of that measure, but that a change in the person of the governor will be considered as a sufficient reason for any alterations which his successor may deem it expedient to make in the list of public functionaries, subject, of course, to the future confirmation of the sovereign.

"These remarks do not extend to judicial offices, nor are they meant to apply to places which are altogether ministerial, and which do not devolve upon the holders of them duties, in the right discharge of which the character or policy of the government are directly involved. They are intended to apply rather to the heads of departments than to persons serving as clerks, or in similar capacities under them. Neither do they extend to officers in the services of the lords commissioners of the treasury. The functionaries who will be chiefly, though not exclusively, affected by them, are the colonial secretary, the treasurer or receiver-general, the surveyor-general, the attorney-general and solicitor-general, the sheriff or provost marshal, and other officers, who under different designations from these, are entrusted with the same or similar duties. To this list must be also added the members of the council, especially in those colonies in which the legislative and executive councils are distinct bodies.

"The application of these rules to officers to be hereafter appointed will be attended with no practical difficulty. It may not be equally easy to enforce them in the case of existing officers, and especially of those who may have left this country for the express purpose of accepting the offices they at present fill. Every reasonable indulgence must be shown for the expectations which such persons have been encouraged to form. But even in these instances it will be necessary that the right of enforcing these regulations should be distinctly maintained, in practice as well as in theory, as often as the public good may clearly demand the enforcement of them. It may not be unadvisable to compensate any such officers for their disappointment, even by pecuniary grants, when it may appear unjust to dispense with their services without such an indemnity."

AN HISTORIC DESPATCH

This despatch produced consternation among those who had been accustomed to regard their offices as held on a life tenure, but it was looked upon by all the friends of good government as the beginning of a new and better order of things with respect to the public services. The matter was considered by a committee of the whole House a few days after the despatch was received, and an effort was made by Wilmot to have a favourable vote with regard to it. But although the friends of the old Family Compact always professed to be extremely loyal and to pay great deference to the wishes of the British government, on this occasion they pursued a different course. A majority of the House voted down a resolution which affirmed that this despatch should be "highly satisfactory," "affording, as it does, the most satisfactory proof of a sincere desire on the part of our Most Gracious Queen and her government to infuse principles in the administration of colonial affairs strictly analogous to the principles of the British constitution." Instead of passing this sensible resolution the committee, by the casting vote of the chairman, passed the following absurd amendment:—

*"Resolved, As the opinion of this committee, that there is nothing in the despatch of the Right Honourable Lord John Russell, now under consideration, to call forth any expression from the House on the subject of colonial government, and that in the event of any occurrence taking place to disturb the present happy political state of the province, the House cannot but entertain the opinion that any loyal and dutiful representations which they may have occasion to lay at the foot of the throne will receive, as they have always done, the royal consideration."*

The vote on the original resolution was fifteen to thirteen, so that, although defeated, it had a strong support in the House, yet it was years before the principles embodied in the despatch of Lord John Russell were carried into full effect in New Brunswick.

#### OFFICIAL SALARIES

When the Civil List Bill was passed in 1837, the salaries of the public officials which were provided for in it were placed on a very liberal scale. The lieutenant-governor was to receive £3,500 sterling, or almost double the present salary of the lieutenant-governor of New Brunswick. The commissioner of Crown lands was to have £1,750 sterling, or about five times as much as the present holder of that office; the provincial secretary got £1,430 sterling, or more than three times as much as the secretary of the province now receives. All the other salaries were in the same proportion, and on a scale altogether beyond the means of the province. It was admitted by Lord Glenelg, when the arrangements were being made for the transfer of the casual and territorial revenues, that these salaries might require modification, and he suggested that the legislative council and the House of Assembly should at some future day present him with their views on this subject. At the session of 1837, a committee of the House of Assembly, of which Wilmot was a member, reported in favour of a reduced scale of salaries, and this report was adopted by the House. During the same year, a committee of the council recommended that the salary of the surveyor-general or commissioner of Crown lands should be reduced to twelve hundred pounds currency. This reduction was protested against by Mr. Baillie, who had held the office for many years, but it was thought to be reasonable by Lord Glenelg. The executive council, however, took no steps to effect this reduction, possibly because Mr. Baillie himself was a member of that body. At the instance of Mr. Wilmot, the matter was taken up by the House at the session of 1839, and a strongly worded resolution passed censuring the executive council for not carrying into effect the reduction of the salary of the surveyor-general, according to the views of Lord Glenelg. At a later period in the same session, a committee, of which Wilmot was an active member, laid before the House a scale of salaries which they had prepared and which they considered sufficient for the public officials embraced in the civil list. Under this scale, the salary of the surveyor-general was reduced to £600 currency, and that of the provincial secretary to the same amount. This report was not accepted by the House. There were strong interests working for the retention of the existing salaries, and it was not until a much later period that the salaries of the public officials were placed on a footing that agreed in some measure with the means of the province.

At the session of 1842, Wilmot was an active member of a committee which was appointed to take into consideration the subject of fees and emoluments of the public officers, and at a later period in the session they made a report recommending that all fees should go into the treasury of the province and that all public officers should receive a certain fixed salary. They presented with their report a scale of salaries which they considered sufficient, which gave the provincial secretary, surveyor-general and attorney-general each six hundred pounds. Bills were introduced for the purpose of carrying these recommendations into effect, but, although passed by the House, they were rejected by the council, which for many years was the graveyard of all measures for the improvement of the province.

### RESPONSIBLE GOVERNMENT

The general election of 1842 was mainly fought on the Reform issue, and the question of responsible government was discussed on every hustings. Unfortunately very few of the candidates who offered their services as legislators had a clear idea of what responsible government really meant, and some of the gentlemen who were not ashamed to confess their ignorance of the principles of the British constitution were men of education and position, from whom better things might have been expected. Mr. Robert L. Hazen, an eminent lawyer, who was a candidate for the representation of the city of St. John, declared in his nomination speech that he never met with any one who could explain to him satisfactorily what responsible government meant. Mr. Humbert, one of the candidates for St. John County, was entirely averse to the new principles. "And what," he asked, "are these principles?" "Why," he would ask, "should the old system be altered; it had never given cause for complaint, it had always worked well,—then why should the people complain?" He was not in favour of any innovations on British colonial government. Very few people understood what responsible government meant. He hardly understood it himself. It was, in his opinion, just introducing another branch into our government. He was not in favour of the government initiating the money votes. He was always sensitive about the rights of the House—to them ought the power of originating the supplies to belong, and to none other—and if returned he would oppose the measure.

Such absurdities as the above would not be worth quoting, but for the light they throw on the views of the average New Brunswick politician of that period. Mr. Humbert had been for many years a member of the House of Assembly, and yet he had been unable to understand the significance of the changes which the Reformers proposed in the constitution of the country. The result of the election in St. John showed that the people of that city and county were quite indifferent to the new doctrines. For the county, Mr. Partelow was at the head of the poll, and that gentleman on the hustings had declared that he was opposed to any change in the constitution. He went into the House, he said, under a constitution of fifty years' standing, and he was determined to leave it as he found it, unimpaired. He disapproved of the initiation of money votes being placed in the hands of the executive. He thought "such a system would be wrong and pernicious in the extreme."

### REFORMERS DEFEATED

When the legislature met in January 1843, it was found that the Reformers were in the minority. Mr. Partelow was determined to make this fact very clear, for in nominating the speaker he made a speech of some length in which he declared that the time had come for testing the principles on which the House should act, and with this object in view he would throw down the gauntlet to the friends of responsible government by nominating Mr. J. W. Weldon, to fill the chair. This gentleman was a very fit representative of the old system, for besides being a member for Kent, he filled almost all the offices in that county which one man could hold. He was postmaster of Richibucto, deputy treasurer for the port of Richibucto, issuer of marriage licenses for the county of Kent, keeper of the seals and clerk of the peace and of the inferior court of common pleas, and registrar of probates for the same county.

Mr. Wilmot was nominated for the speakership by Mr. Hill, of Charlotte, but declined to run; the odds were too great, and so Mr. Weldon, the opponent of responsible government, was elected without opposition. This was an unsatisfactory result after so many years of conflict, but the friends of Reform, although they had to admit defeat, were neither daunted nor discouraged. They knew that many other questions besides the abstract one of the adoption of responsible government had influenced the recent election, and that the new principles had been blamed for results that would have been avoided if they had been in operation. For instance, the transfer of the casual and territorial revenues to the treasury of the province in 1837 had placed a very large sum, amounting to £150,000, at the disposal of the legislature. All this money had been dissipated by extravagant grants, and in 1842 the province was actually in debt. Many ignorant electors were made to believe that this result was due to the Reformers who had been the means of obtaining this money, which the legislature had squandered; and this feeling was so strong in the county of York, that Messrs. Wilmot and Fisher stood lower on the poll than the two anti-Reformers who were elected with them.

## CHAPTER VI

### THE READE APPOINTMENT

ALTHOUGH elected in opposition to responsible government, the legislature of 1843 at its first session took one important step in favour of Reform. The arrangement by which the executive and legislative councils were separated, which had come into force ten years before, although a decided improvement on the old state of affairs, did not produce universal satisfaction.<sup>3</sup> The constitution of the legislative council was complained of, and it was described as an obstructive body which disregarded the wishes of the people. Bills of the utmost importance, which had been passed by large majorities in the House of Assembly, and which were demanded by the people, were frequently rejected by the council without being even discussed. Most of its members were opposed to any change in the constitution of the province, and everything which seemed to be in the direction of giving power to the people was denounced as an innovation and condemned as an infringement of the vested rights of the council. One of the chief causes of complaint against the council was their rejection of every bill for the amendment of the charter of King's College. Wilmot had so frequently had his efforts in this direction nullified by the council that he introduced a resolution in the assembly condemning the conduct of that body for rejecting the college bill, and the council retaliated by unanimously voting this a breach of privilege.<sup>4</sup> The complaints of the House of Assembly against the legislative council were now embodied in an address to the queen. In this address it was stated that in the opinion of the House the legislative council should be composed of persons not only representing all the leading interests of the province, but so independent in respect to property and so free from official control as to form a constitutional check on the executive. Although, by the laws that existed then, members of the assembly were required to be possessed of real estate to the value of two hundred pounds, over and above all encumbrances, there was no property qualification whatever required for members of the legislative council. The address of the House expressed the opinion that members of the council should be required to possess a certain amount of real estate, and that their seats should be vacant on the loss of this qualification, or on their becoming bankrupt, or public defaulters, or from neglect to give their attendance for a given time without leave of the lieutenant-governor. The address also stated that the constitution of the legislative council was defective and objectionable in other respects, because, of the eighteen members who composed it, a great proportion held offices at the pleasure of the Crown, and the principal officers of the government usually formed a majority of the members present. It was also complained that members of the Church of England had too great a preponderance in the council, the only members not of that communion being one Presbyterian and one Baptist.

#### THE LEGISLATIVE COUNCIL

At the next session of the legislature, despatches from Lord Stanley were laid before the House of Assembly in which it was stated that the council would be increased in number to twenty-one, and four new members of the council were to be appointed. The new members then appointed were T. H. Peters, Admiral Owen, William Crane and George Minchin, while the Hon. Thomas Baillie, the surveyor-general, the Hon. Mr. Lee, the receiver-general, the Hon. James Allanshaw, of St. Andrews, and the Hon. Harry Peters, of Gagetown, retired. No doubt the retirement of two officials who received large salaries was some improvement, but the council required further remodelling before it could be said to be an efficient body, or one in sympathy with the inhabitants of the province.

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<sup>3</sup> This change had been effected by a royal commission under the signet and sign-manual dated December 3d, 1832. There is nothing in the records of the province to show why this was done. Neither the council nor the House of Assembly had asked for it. The Nova Scotia council was not divided until 1838.

<sup>4</sup> Mr. Wilmot's resolution was carried in the assembly without a division, so that he had the solid support of the popular branch of the legislature, yet little good was to be expected from such votes in the House.

The legislative council has now ceased to exist, and it may be said of it that it was never a very satisfactory body for legislative purposes. Perhaps the original composition of it created such a prejudice against legislative councils as to hamper its activities; and, from having been at first merely the echo of the wishes of the governor, it became latterly, to a large extent, the echo of the wishes of the government. Gradually it became relieved of its official members, and in its last years no head of a department ever occupied a seat in the legislative council; for it was thought, and rightly, that the power ought to be in the House, where the responsibility to the people was most felt, and that it was not wise to place an official whose department expended large sums of money in a body which properly had no control over the public expenditure. The legislative council had undoubtedly from time to time many able and useful members, and, at certain periods in the history of the province, particularly during the confederation discussions, it took a firm stand in favour of measures which seemed essential to the prosperity of the British North American provinces. No one can deny that at that time it exercised an authority fully equal to that of the Lower House, but it cannot be doubted that some of this work was done at the expense of the proper balance of the constitution. Such an exercise of unusual authority on the part of a body not elected by the people may serve a purpose at a particular crisis, but cannot be commended as an example, and if frequently repeated would end in the destruction of the constitution.

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