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JOHN NEILSON: HIS POLITICAL ACTIVITIES
IN LOWER CANADA, 1818-1834

A Thesis
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Master of Arts

BY

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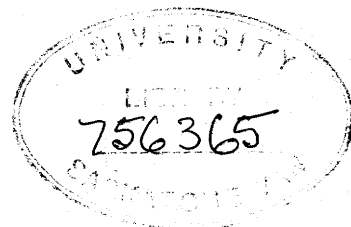


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CHAPTER I

INTRODUCTION TO NEILSON

Before the introduction of responsible government and party rule in Canada, individual members of the legislative body could assume an importance which to-day is reserved almost exclusively to the leaders of the parties. Under the colonial system operating in Canada during the early part of the nineteenth century, when governors, legislators, and functionaries shared, albeit unequally, the powers of government, a particular régime was judged by the political figures who happened to be most prominent for the moment. In Lower Canada, such political figures, with the exception of those followers of Papineau who by their docility were dubbed his moutons, adhered to no party creed and were guided by their own individual reactions to a given situation. The extent to which a man in public life followed a line of independent action was of course determined by the extent to which he possessed the courage of his convictions. In the careers of such members of the Lower Canadian Assembly as John Neilson, Andrew Stuart, Pierre Bédard, François Quesnel, Austin Cuvillier, Louis Guy, and others, who possessed this courage in a marked degree, independence was stamped on their every word and deed.

While possessing this trait in common with some of his outstanding contemporaries, John Neilson distinguished himself from them in one most remarkable respect. John Neilson, an

Anglo-Saxon as his name indicates, occupied an unique position in Lower Canadian politics by reason of his long association with the French party and his unremitting devotion to what he conceived to be the best interests of the French people. No other man of his race, in this period of Canadian history, identified himself so thoroughly with the aspirations and endeavours of the French-speaking population of Canada. For this reason, John Neilson's career assumes a peculiar interest in a history deeply marked by the conflict of two major racial and cultural groups.

John Neilson was born in Scotland in the year of American independence, the sixth child of a Scottish laird. (1) After attending parish school until the age of fourteen, he was sent to Canada into the custody of an older brother, Samuel. He arrived in the land of his adoption in 1790, just before the grant of the constitution which he was to uphold so consistently throughout his long political career. Young Neilson's future profession was already determined, for his brother had just acquired the ownership and editorship of one of the two newspapers of the province, the Quebec Gazette, founded in 1764 and published in English and French. John Neilson proceeded to learn the trade from the bottom up, and as early as 1793 began to assume responsibilities of a commercial nature. In

(1) For Neilson's early life, see F. J. Audet, "John Neilson," Transactions of the Royal Society of Canada, 3rd ser., Vol. XXII (1928), sec. 1, pp. 81-84, and H. J. Morgan, Sketches of Celebrated Canadians (Quebec, 1862), pp. 297-298.

that year his brother died. Until John Neilson became of age, the paper was published by the Reverend Alexander Sparks, pastor of the Presbyterian Church of Quebec, under whom the former had continued his education since coming to Canada.

From 1796, however, Neilson relied on his own resources for the continued improvement of his mind and for the advancement of his business. When the Gazette came into his hands, it was a mere weekly journal containing proclamations and ordinances of the governor, commercial advertisements, and American and European news gleaned from American and English newspapers. Discussions even remotely touching Canadian politics were carefully avoided. The establishment of rival papers, the Mercury in 1805 and Le Canadien in the following year, necessitated reforms. Accordingly, in 1810, the editor of the Gazette enlarged his publication, which now appeared twice a week, and began the practice of commenting on current affairs, but discreetly as became the official organ of the government.

For all its discretion, the Gazette fell into disrepute with Lord Dalhousie, Governor of the colony from 1820 to 1828. On April 6, 1822, Neilson received a letter from the Governor's secretary, Colonel John Ready, accusing the Gazette of being apathetic towards the interests of the Crown, and giving notice that the paper would henceforth be published under a royal commission revocable at pleasure. If Neilson did not wish to continue on these terms, the letter stated, arrange-

ments would be made with other persons. (2) In reply, Neilson defended the policy of his paper, which, he claimed, had not changed during the twenty-five years it had been in his hands; but he declared his willingness to transfer the establishment to his son, Samuel, a step which he had already been considering in order to leave himself perfectly free in his public capacity as a member of the Legislature. (3) A year after accepting the appointment of King's Printer, Samuel Neilson quarrelled with his editor, his commission was revoked, and a new Quebec Gazette, published by authority, was founded in spite of Neilson's protests against the use of his title.

As long as the old Gazette, as it was now designated, remained under the control of his son, Neilson disclaimed all responsibility for it. In a letter written soon after his renunciation of the editorship, Neilson said:

Les observations sur la nouvelle de la réunion qui ont paru dans la Gazette ne sont pas de moi, mais de mon fils; j'en aurai parlé autrement: mais comme toute la responsabilité de la publication aussi bien que les gains et les pertes sont pour lui et M. Cowan, je ne crois pas devoir m'en mêler aucunement, ni même d'en parler devant eux crainte de les influencer. Je fournirai seulement le rapport d'agriculture chaque mois pendant l'été, et c'est tout ce qu'il y aura de moi dans la Gazette de Québec. (4)

The premature death of his son in 1835, by which the direction of the paper once more devolved upon the elder Neilson, was preceded by a lengthy illness. It is possible, therefore, that,

(2) Calendar of Public Letters in the Neilson Collection, Report of the Public Archives of Canada for 1913, Appendix G, P.148.

(3) John Neilson to Col. Ready, April 12, 1822, ibid., p.149.

(4) Neilson to Papineau, June 22, 1822, Neilson Papers (photostat copy).

in spite of his disclaimer, the pages of the Gazette did occasionally reflect John Neilson's personal views. Dent maintains that John Neilson continued to exercise "a certain supervision over the management of the Gazette." (5) This possibility is borne out by the close relationship of John Neilson with the actual editor, and it is accepted by such prominent contemporaries as the historian, Robert Christie, and Lord Aylmer. Christie, when referring to the Gazette, speaks of it as "Mr. Neilson's Gazette," but the context seems to indicate that he meant John Neilson and not Samuel Neilson, who apparently was never directly engaged in politics. (6)

Lord Aylmer's correspondence leads to the same conclusion. In a despatch of December 22, 1832, Aylmer inclosed some newspapers, drawing particular attention to a number of Neilson's Gazette, in which he had inserted in a conspicuous place, a set of resolutions in favour of His Majesty's Government, adopted at a recent meeting in the county of Shefford. "This circumstance," said Aylmer, "is the more remarkable since Mr. Neilson has heretofore been distinguished amongst the opponents of the local government." (7) Again, in a despatch of January 30, 1833, Aylmer invited attention to an article in the Quebec Gazette on the

(5) J. C. Dent, The Last Forty Years: Canada since the Union of 1841 (Toronto, 1881), I, 92.

(6) Robert Christie, A History of the Late Province of Lower Canada (Quebec, 1848-1855) Vols. III and IV.

(7) Aylmer to Goderich (Private), Dec. 22, 1832, Q.203, P.305 (Smith transcript).

Legislative Council, and in a particular manner to the leading articles in that paper "as indicative of the altered view of the affairs of the province taken by Mr. Neilson." (8) The reference was likely to John Neilson, since Samuel Neilson was scarcely prominent enough to be mentioned in this way in a Governor's despatch. Furthermore, John Neilson's defence of his son when he was involved in a libel suit in 1828 indicated some agreement in their views.(9) When they differed, it appeared to be because the younger Neilson, in his father's opinion, was too extreme in his views and too inclined to adopt the tactics of the other journals of the time. "I do not approve of the conduct of my son," said Neilson in 1835," with respect to many of the articles which he has admitted into the Gazette since he has been its proprietor and editor. He gives way occasionally to the errors (?) and passions of others and probably his own also." (10) It may be assumed, therefore, that the mor

(8) Aylmer to Goderich (Private), Jan. 30, 1833 Q.206 p.258 (Smith transcript).

(9) The libellous articles concerned Dalhousie's revival of the militia ordinances of which Neilson disapproved. Neilson protested against the prosecutions to the Select Committee of the British House of Commons which investigated Canadian affairs in 1828. See Report of the Attorney-General on Libel Cases, 20 October, 1828, A. G. Doughty and N. Story (eds.), Documents relating to the Constitutional History of Canada, 1819-1828 (Ottawa, 1935), p.506.

(10) Neilson to W. L. Mackenzie, Nov. 24, 1835, Neilson Papers (photostat copy).

moderate and restrained of the articles of the Gazette had (11)
John Neilson's approval, if they were not actually from his pen.

John Neilson continued to edit the Gazette until the very eve of his death on February 1, 1848. Thirty volumes of this venerable journal attest to an ability, industry and impartiality, unexampled in the Canadian journalism of the day. His impartiality was, of course, a relative thing. The papers of the time were peculiarly addicted to the use of personalities and all the other expressions of partisan bias. Except during the administration of Dalhousie, who was a personal enemy of the Neilsons, the old Gazette kept free from the violent political controversies in which the other journals were bemired. Neilson, rising above that despicable indulgence in slander and personal malignities, employed the mighty instrument of the press for the sober discussion of political measures and changes and for the inculcation in the public mind of the benefits of industry, order and education. Thus, throughout his journalistic career, he retained an unparalleled reputation for moderation and sane judgment, and became a powerful force in the instruction and guidance of public opinion.

The personal influence of Neilson increased with that of his journal. His equitable temper, his constant good humour, his genuine and unassuming simplicity, won him the respect and affection of his associates. Benevolence was conspicuous among his good qualities; his advice and assistance were freely bestowed, even the humblest having easy access to him. He possessed an especially sympathetic understanding of the country folk and, in his political career, imposed upon himself the task

(11) On the basis of this assumption some articles from the Quebec Gazette have been quoted in this essay as expressing opinions held by John Neilson in common with his son.

of championing their cause. To gratify his love of rural life, he purchased a property at Cap Rouge, about six miles up the river from Quebec, which was his summer home for many years and later his permanent residence. There he learned to know and esteem the habitants of the country districts who, "living honestly by their work.....neither wish nor will ask for anything but what is just and for the good of the country." (12) At the time of his first election, he declared that he would be honored to have the habitants of the country district supporting him, and proud "to be the interpreter of their sentiments and to defend their rights." (13)

The desire to preserve the tranquillity and promote the welfare of the poorer people explains Neilson's attitude to many public issues of the day. It accounts for the conservatism and the liberalism, both of which were ingredients in his political make-up. He found the habitants happy in the enjoyment of their language, religion, and customs, and in the possession of their small farms of one or two hundred acres. His conservatism consisted in trying to preserve the benefits which the humble folk were enjoying; his liberalism entailed changes in the government to increase its efficiency and the extent of its identity with the interests of the common people. His concern for these people furnished the motive for his opposition to all changes in their economic life which might disturb or frighten them. He conceived that it was the duty of

(12) J. Neilson to Captain Jobin, July 11, 1817, Report of the Public Archives of Canada for 1913, p116.

(13) Ibid.

the government not to "interfere with the honest efforts of the industrious classes among the people, for the bettering of their condition, by many new laws and regulations; but rather facilitate their freedom." (14) The freedom and tranquillity of the habitants assumed in his mind greater importance than the benefits which might accrue from innovations of an agricultural or commercial nature. Accordingly, he protested against the onerous conditions imposed by seigneurs, against waste lands as an obstacle to settlement and progress, against the discontinuance of the policy of free land grants: he objected to all changes in land tenure and the registration of land titles and mortgages. His comments on the Register Act before the committee of the House of Commons, which investigated Canadian affairs in 1828, reveal a laudable anxiety for the welfare of the peasantry.

I found that the bill as proposed would occasion more fraud than it would prevent, and therefore I thought it was better to remain as we were. The truth is, that almost every head of a family in that province is a proprietor of land, and they, unfortunately are not educated, they cannot do their own business; they could not comply with the formalities required by agents whom we find, by experience, are not always safe, they may trick them in all kinds of ways Under these circumstances they would lose their privileges, and there would probably be fraudulent entries made in the book of registers which gives the privileges; so that, in reality, a great many of the poor people would be deprived of their only means of support, which is the land upon which they work. (15)

As president of the Agricultural Society of Quebec, as Secretary of the Canada Committee of the Society for the Education

(14) Neilson to W. L. Mackenzie, Nov. 24, 1835, Neilson Papers (photostat copy).

(15) Report from the Select Committee on the Civil government of Canada, July, 1828 (Re-printed in Quebec in 1829), p.84.

of the Poor, as a member of the Legislative Assembly where he sponsored their petitions and fought for their rights, Neilson showed his high regard for the small farmer, who, he conceived, formed the backbone of the province and held the destiny of the future nation.

Most of these small farmers were descendants of the earliest settlers on the St. Lawrence. With extraordinary ease Neilson established relationships of lasting cordiality with them. Actually the association, although unusual, was not incongruous since Neilson was not an official nor a soldier nor an absentee landlord, like nearly all the other men of British origin who were connected with the colony, but a journalist, a proprietor of land on which he lived himself, and a promoter of immigration and settlement. (16) Agriculture formed a bond of contact between himself and his tenants and other French habitants, a bond which was strengthened by mutual trust and esteem. Another important factor contributing to the confidence which the French placed in Neilson was his birth in a country which traditionally supported France against England. A man of Scottish ancestry could not be suspected of prejudice towards the French. Finally, Neilson was a man of exceedingly tolerant views, one who was always reluctant to create enmity by criticism unless some essential principle were in danger of being violated.

(16) He claimed to have been more instrumental in introducing people from Europe than any one else in Lower Canada. His object was not to make money, for the lands, which Neilson and three others purchased in 1816 in the township of Stoneham within thirty miles of Quebec, were granted without payment by the settlers and they were supplied with sufficient to subsist for one year. (Ibid., p.279).

His tolerance extended to religion in the fullest measure. A member of the Presbyterian Church, of which he was an elder for a number of years, he was yet zealous in promoting the interests of all of the numerous sects in the province. In reply to a letter from the Wesleyan Methodist Societies, dated October 23, 1826, which acknowledged his assistance to them in the Assembly, Neilson said:

In giving my vote that they might enjoy rights and privileges equal to those enjoyed by other religious denominations I had no other merit than that of almost every other member of the Assembly of Lower Canada who in this respect faithfully represented the majority of their constituents who wish to hold no rights and privileges but such as may be common to all the inhabitants of the province. (17)

Neilson had a particularly deep respect for the Catholic clergy, a respect which they returned in full measure. His friendships of longest standing were with priests such as the Reverend J. Demers of the Quebec Seminary. For the interests of the Catholics as a whole no Protestant could have been more solicitous. "It seems to me," he said in a letter to Sir Francis Burton, "that in the eye of an honest protestant Government, the Roman Catholics of Canada ought to be considered as orphan children received into a family. Their interests and rights ought to be more rigidly guarded than those of the children of the head of the family; because natural affection will always operate in favour of the latter." (18) The following conversation between Neilson and D.B.Viger with regard to religion is recorded by M. de Gaspe in his Mémoires; It

(17) Report of the Public Archives of Canada for 1918, p.482.

(18) Draft of a letter to Sir Francis Burton, Nov.22, 1826, Neilson Papers (photostat copy).

illustrates Neilson's remarkably generous attitude towards the religion of the French, and incidentally his lively humour.

M. Neilson - Les catholiques sont meilleurs chrétiens que nous.

M. Viger - Où voulez-vous en venir avec ce préambule?

M. Neilson - Les catholiques croient que comme hérétiques les protestants seront tous damnés.

M. Viger - Doucement! doucement! s'il vous plaît; mon ami les

M. Neilson - Allons donc! avez-vous oublié les préceptes de votre religion; hors de l'église point de salut.

M. Viger - Il ne faut pas prendre

M. Neilson - Je le répète; vous croyez que les protestants rôtiront comme hérétiques dans l'enfer pendant une éternité.

M. Viger - Nous prenez-vous pour des Iroquois?

M. Neilson - Bouilliront, si vous le préférez, dans la grande chaudière de Satan, ce qui ne vous empêche pas de nous aimer, de prier sans cesse pour nous, et notamment le dimanche pendant votre messe.

Les protestants, eux, croient que les catholiques grilleront dans l'enfer comme idolâtres; et loin de vous plaindre, leur haine est telle qu'ils s'en réjouissent.

Et Monsieur Neilson de rire, de ce rire sardonique qui lui était habituel, et Monsieur Viger d'y faire écho. (19)

As the above quotation indicates, a frank and genial camaraderie characterized the relationship of Neilson with Viger, one of his most intimate personal and political friends. Other French-Canadians, like Louis Joseph Papineau and Pierre Bédard, Neilson also counted among his closest friends. All these men looked to Neilson for sympathy and guidance. Viger, whose appointment in 1831 as agent of the Assembly of Lower Canada in London put thousands of miles between himself and his mentor, seems to have been utterly lost when left to his own resources. Writing to Neilson a few months after his arrival in London, he says:

(19) Quoted by F. J. Audet, Trans. Roy. Soc. of Can. 3rd ser. Vol. XXII (1928), sec. 1, p. 95.

Combien j'ai regretté votre absence et de n'avoir ni vos avis ni votre présence, et de ne pouvoir m'aider de votre expérience Passerai-je ici l'automne? Je voudrais bien un mot de vous à ce sujet je tâche d'être aussi réservé que possible, et j'ai toujours devant les yeux les observations dont vous avez bien voulu me faire part sur cet article. (20)

Papineau found himself in a similar situation, at the time of the mission of Neilson and himself to London in 1823. Neilson returned to Canada in April of that year. Papineau, left to continue the negotiations alone, wrote to Louis Guy of Montreal on the following May 23rd:

Je vais me trouver dans un cruel embarras par le départ de M. Neilson. . . . Je perds un bon ami et la co-opération d'un bien honnête et bien habile patriote, engagé avec zèle à servir la cause à laquelle il est attaché. (21)

Until the cooling of their friendship in the decade of the 1830's, Papineau was lavish in his praises of Neilson, whom he seemed to hold in higher esteem than any man of his own race. The following is a typical sentence from his correspondence:

Je n'ai pas besoin de vous répéter tout ce que je sens d'estime et de reconnaissance pour un ami, à qui des sentiments d'amour du bien public ont fait faire tous les sacrifices que vous avez faits à la cause de notre pays je vous aime de tout mon coeur et aimerai toujours ce qui vous ressemblera . . (22)

To Neilson, as to no other, Papineau unburdened his woes, entrusted his confidences, and confessed his shortcomings. To Neilson he wrote on January 9th, 1827: "The injustice done to my country revolts me, and so perturbs my mind that I am not always in a condition to take counsel of enlightened patriotism,

(20) Viger to Neilson, June, 1831, Neilson Papers, p.298 (Smith transcript).

(21) Bulletin des recherches historiques, février, 1928, p.94. as quoted by Audet, Trans. Roy. Soc. of Can., 3rd ser., Vol.XXII(1928), sec.1, p.87.

(22) Papineau to Neilson, Jan.31, 1828, Bulletin des recherches historiques, juillet, 1932, p. 440.

but rather inclined to give way to anger and hatred of our oppressors." (23)

Neilson's generous aid and sympathy, his tolerance, his freedom from racial prejudice, his interest, all served to entrench him more and more firmly in the affections of the French. Neilson, for his part, maintained his attachment to the French-Canadians as a people. He had learned to love their primitive manners and customs, their simple character and habits, and the peculiar vicissitudes and events of their history. The revolt of a portion of the population in 1837 did not shake his friendship, for he insisted that the mass of the people were untainted by the disaffection of a few demagogues. The French were quick to show their gratitude to Neilson for his voluntary espousal of their cause. In a letter of November, 1813, thanking Neilson for his kind words on the conduct of the Canadians at Chateauguay in the war with the United States, Pierre Bédard drew a distinction between Neilson and the other British. "Your compatriots," he said, "are so set in their prejudices against the Canadians that the greatest miracles would fail to open their minds." (24) In a letter expressing satisfaction that Neilson had consented to run for Charlesbourg, the same writer declared that no greater compliment could be paid to Neilson than to regard him as the candidate of the Canadians; not because the Canadians counted more than the others, but because it showed the good opinion which the Canadians had of him, although they

(23) Quoted by A. D. DeCelles in Papineau: Cartier ("The Makers of Canada", Toronto, 1909), p.67.

(24) Report of the Public Archives of Canada for 1913, p.105.

thought that no one was better than a Canadian. Bédard shared with Neilson the hope of seeing the distinction between the English and the Canadians effaced little by little, and reminded him how they used to agree that a body of Englishmen in the Assembly who were free from party spirit would enable them to break down the partisans. (25) On January 29, 1831, Neilson was presented with a silver cup at a dinner given in his honor by the citizens of Quebec. On the cup the following inscription was engraved: "A John Neilson, Ecuyer, M.P.P., député deux fois auprès du Parlement Impérial pour défendre les droits des Canadiens, ce léger tribut de reconnaissance lui est offert en mémoire des services qu'il a rendus au pays et comme hommage à ses vertus civiques." (26)

Neilson could not fail to notice that other citizens of Anglo-Saxon origin did not share his understanding of the French nor his reputation among them. He himself considered all distinctions of race, creed, and nationality as pure nonsense. In his view all residents of the colony had the same rights and interests, no matter how much their prejudices might differ. (27) For this reason, and perhaps also because he wished to remove emphasis from these ^{prejudices}, Neilson constantly minimized the racial animosity which undoubtedly existed in

(25) Bédard to Neilson, June 26, 1817, summary in Report of Public Archives of Canada for 1913, p.115.

(26) M. Bibaud, Panthéon Canadien, as quoted by Audet, Trans. Roy. Soc. of Can., 3rd ser., Vol.XXII (1928) sec.1, p.88.

(27) Report of the Select Committee of 1828, p. 87.

Canada between the French and British. He did realize that many immigrants to Canada, expecting to find a thoroughly British colony with everything to their liking, were not prepared, as he had been to accept what they found without protest. (28) He flatly denied, however that there was an irreconcilable hatred between the two races, and in 1840 even went so far as to deny that distinctions of national origin had been at the bottom of their difficulties. (29) This opinion was, of course, in direct opposition to Lord Durham's findings, but Neilson disproves Durham's statements with evidence from his own Report. Durham observed that among the oldest official families there was the best feeling towards the French-Canadians. Neilson states that these families were, of all the English, those who had been longest in the country and who had suffered most from the perversities of the Assembly. Could there be, he asks, stronger proof that the contest was not of races, than that, under the most unfavourable circumstances, those of the English inhabitants who had had the most intercourse with the French population had the most kindly feeling towards them? (30) Neilson's opinion of the attitude of the French towards their conquerors is revealed ~~by part~~ in the evidence he gave before the Select Committee of the British House of Commons in 1828. He was asked:

In your opinion, does any indisposition exist among the French-Canadians to see British settlers fixing themselves in the lands of Lower Canada? "I have stated before generally that I did not believe there is any such indisposition but I have recollected facts, which in my

(28) Ibid. , p.85.

(29) See William Smith, "The Reception of the Durham Report in Canada", Canadian Historical Association Report, May, 1928, p. 54.

(30) Ibid.

mind prove that there does not exist amongst the peasantry of Lower Canada, who form the body of the population, any such feeling. In 1816, I began, with three others two of whom were natives of Canada, of French descent, a settlement, to be composed of people from Europe" Have you found that European population to be generally contented? "Very contented, and they agree remarkably well with the Canadian population; and so far from the Canadian population being in any way dissatisfied with me, who was the active person in introducing those people in the county, I never have felt any diminution of their confidence; on the contrary, I believe it stands higher than it did ten years ago. (31)

Neilson evidently idealized the relationship between the French and the British. He also idealized the French Canadians themselves and their representatives in the Assembly ~~of which~~, he asserted, ~~that it~~ would resist no change ^{that} ~~which~~ would be for the good of the people. (32) Neilson's admiration of the French, however, did not make him indifferent to the other inhabitants of the province. As a citizen, he was conscientious enough to be attentive to the interests of all classes. In the Assembly he sponsored the petitions of all classes and creeds from judges of the King's Bench to humble tavern-keepers, from Quakers to Indians, from merchants to farmers. In the Assembly itself, Neilson became increasingly popular until he reached the apogee of his career in 1830. He was appointed to committees more frequently than any other representative sitting in the session from January 22 to March 26 of that year. Out of 112 committees appointed in that short period,

(31) Report of the Select Committee of 1828, p.279.

(32) Ibid., p.87.

Neilson was asked to serve on no less than 44. (33)

His interest extended beyond the boundaries of his province to include the leaders of the reform movement in Upper Canada, Marshall Spring Bidwell, Dr. W. W. Baldwin, and especially William Lyon Mackenzie who corresponded freely with Neilson. In fact Neilson became Mackenzie's confidential adviser in determining the policy of reform to be followed in Upper Canada. Mackenzie later stated that it was Neilson who drafted the petitions presented by him in 1832 which formed the basis of the Seventh Report of the Committee on Grievances. (34)

What was the secret of Neilson's influence in his community and throughout the colony? Certainly, his personality, although interesting and forceful, lacked the colour of that of a Papineau or a Durham. It is equally certain that, although possessing a model journalistic style which was terse, emphatic, and eloquent, he never made himself conspicuous by his oratorical powers. In short, he could never sway the masses like his famous contemporary, Papineau. His reputation was based on something more solid. It was based, first of all, on his complete dependability. His cool judgment in many a

(33) See Journals of the Assembly of Lower Canada. The large number of committees, dealing mostly with petty matters, is indicative of one of the vices of burdening the provincial Assembly with local affairs.

(34) A. Shortt and A.G. Doughty (eds.), Canada and its Provinces. (Toronto, 1914), III, 378.

crisis proved that his wisdom and sobriety could always be relied on. As Bédard remarked, the province always turned to Neilson when anything important was to be undertaken. (35)

Secondly, Neilson never tried to force his views on anyone.

"I may be right or I may be wrong," he once said. "Albeit I never have and never shall, I think, endeavour to force my opinion on others, asking no more liberty for myself than I am willing to allow to others. Personal views, I am sure, have a great deal to do with the violence of the differences in the colonies." (36)

Consequently, he never carried difference of opinion to the extent of being uncivil to his fellowmen, on the principle that "it is just the capacity of not allowing oneself to be goaded to hostile feelings against any class of men, or to do anything unreasonable or unjust, that is essential in those at the head of public affairs." (36) But, most of all, he was recommended to his fellow-citizens for his forthright honesty and absolute disinterestedness. Mr. W. J. Rattray says of Neilson:

In whatever respect the character of John Neilson may be viewed, there appears to be substantial cause for eulogy, and but little reason for blame. His spotless, and unwavering integrity, more than any other quality of head or heart, won for him the sincere respect of his contemporaries. He was not only a good man, but also a patriot, willing to spend and he spent in the cause of Canada, active, eloquent, able and persistent in all he set his hand to do. (37)

(35) Bédard to Neilson, Feb. 1, 1829, summary in Report of the Public Archives of Canada for 1918, p. 499.

(36) Neilson to W. L. Mackenzie, Nov. 24, 1835, Neilson Papers (photostat copy).

(37) The Scot in British North America (Toronto, 1880), II, 492.

This estimate is borne out by Neilson's conduct during a career of thirty years in public life. He did not enter upon that career with a desire for fame or personal advancement. In 1822, when he was suggested as a delegate to England to protest against the proposed union of the provinces, he said that he had no inclination to go, "as his ambitions did not go beyond the fields and the woods." (38) Only his sense of duty induced him to accept the task. His high ideals of public service are expressed in his own words in response to the thanks which the House of Assembly tendered to him on the 29th of March, 1830, on the occasion of his return from representing their interests in England.

In performing a duty imposed upon me by my fellow citizens, I did nothing more than was incumbent on any inhabitant of the province, who might be honored with their confidence; and whose means might allow of those sacrifices of ease and individual interest which we all owe to the common welfare, and of which so many of my most esteemed friends both in and out of the Committee by which I was delegated, have set such an honorable example. Next, after the consciousness of having faithfully endeavored to discharge a public duty, the best reward is the certainty that we have been successful as to obtain the approbation, with which the representatives of the people have been pleased to honor me. (39)

Neilson first allowed his name to stand for election to the Assembly as a member for the county of Quebec in the summer of 1817. When he discovered that his opponent, James McCallum, had no scruples about using violence, the purchase of votes, and other corrupt means to ensure his success, Neilson withdrew

(38) Neilson to Papineau, Nov. 16, 1822, Report of the Public Archives of Canada for 1913, p. 130.

(39) Quoted in Morgan, p. 299.

his name, one of those actions, declared Bédard, that does more honour to a general than the gaining of a battle. (40)

The Assembly annulled McCallum's election. Neilson ran in the new election which ensued. On one occasion during the campaign, he addressed the electors in the following vein:

You must come to vote the first day, at your own charges without expectation of being paid or treated. I desire to be elected only by those whom I can esteem or respect, and not by people, who would engage at so much a day to come and vote for me or for any other person who would pay them as much or more. I wish, in fine, to have supporting me, only peaceable and honest citizens . . . and if there be any disorder or corruption, I will again take it on myself to provide a remedy. (41)

On March 28th, 1818, Neilson was declared elected. He sat in the Assembly until October 9th, 1834. During that period of sixteen and a half years, he was twice a delegate to England, and served as a commissioner to arbitrate the customs dispute between Upper and Lower Canada in 1819, as a commissioner to investigate the penitentiary systems of the United States in 1834, and as justice of the peace in the district of Quebec, yet he consistently refused to accept any office of emolument under the Crown. His reason, as given to Lord Aylmer in 1832, when the latter notified him of his appointment to the Executive Council, was a pledge he had made to his constituents not to take any step that would change the relations between himself

(40) Bédard to Neilson, Aug.3, 1817, summary in Report of the Public Archives of Canada for 1913, p.116.

(41) J. Neilson's address to the electors of the county (draft), Feb.21, 1818, ibid., p.120.

himself and them. (42)

The chief interest in Neilson, therefore, lies in his activities as a representative to the House of Assembly of Lower Canada. Before describing those activities, it will be necessary to outline the history and indicate the character of the Assembly in which he took his seat in 1818.

(42) J. Neilson to Lord Aylmer, Feb. 14th, 1832, summary in Report of the Public Archives of Canada for 1918, p.518.

CHAPTER II

THE POLITICAL SITUATION IN LOWER CANADA IN 1818

The instrument of government by which Lower Canada was administered from 1791 to 1838 was the Constitutional Act. Briefly, the machinery it provided consisted of a Governor appointed by the King to represent him during pleasure, a Legislative Council appointed by the Crown for life, and an Assembly elected by popular vote for four years. The Governor received his instructions from, and was responsible for their execution to, a very busy official in England. That official was, between 1782 and 1794, the Secretary of State for Home Affairs, and thereafter the Secretary of State for War. Although the Tories were in power in England almost continuously from 1782 until 1830, ministers were continually being shuffled from one department to another. Thus, during the period 1791 - 1834, the affairs of the colonies were directed consecutively by Henry Dundas, the Duke of Portland, Lord Castlereagh, the Earl of Liverpool, Lord Bathurst, Wilmot Horton, William Huskisson, Sir George Murray, Viscount Goderich, E. G. Stanley, Thomas Spring Rice, and the Earl of Aberdeen. (1) With the exception of Bathurst, who controlled affairs from 1812 to 1827, none of these men remained in office long enough to master the

(1) See A. G. Doughty and D. McArthur (eds.), Documents relating to the Constitutional History of Canada, 1791-1818 (Ottawa, 1914), Also A. G. Doughty and N. Story (eds.), Documents relating to the Constitutional History of Canada, 1819-1828 (Ottawa, 1935), and Lord Durham, Report on the Affairs of British North America, edited by Sir Charles Lucas (Oxford, 1912), Vol. II, p.104, n.2.

~~master~~ the situation in the colonies. Hence the details were usually left to the permanent subordinates, who were irresponsible for the policies adopted, handicapped by remoteness from the colony, and usually less capable ^{of} ~~to~~ determining procedure than the Governors whom they instructed.

For the Governors this system made a difficult rôle doubly difficult. Frequently they lacked the experience or the qualifications required for their task. Owing to the constant threat of an attempt by France to recover her lost territory, and to the existence of a foreign country to the south of the colony, all the Governors appointed to Canada prior to 1838 were military men. Some were able and experienced administrators as well as good soldiers; others had nothing but their military achievements to recommend them. After 1791 the performance of the functions of Governor called for a more than ordinary quantum of political sagacity and the exercise of a very considerable amount of tact in the managing of men and situations. The increased demands made upon the Governor after 1791 were due to the introduction in that year of the principle of popular representation without that of the responsibility of the Executive Council, which imposed on the Governor the task of obtaining the support of the Assembly for the Government's measures. In other words, he was reduced to the painful necessity of becoming the leader of a party whenever those measures provoked opposition. It is true that he was provided with wide powers for enforcing the recognition of the royal prerogative. He appointed all government officials, summoned, prorogued, and dissolved the Council and Assembly, issued writs

of election, controlled the collection and expenditure of revenue belonging to the Crown, and gave, refused, and reserved assent to bills. Unfortunately, the part the Governor was obliged to play as leader of a party tended to degrade these constitutional rights, in the popular mind, to mere party weapons. Moreover, the King's representative was frequently the brunt of the personal abuse which inevitably falls on such a leader.

The Governor, stranger as he usually was to the country and its people, was peculiarly dependent on the advisers he chose to assist him. These advisers, who composed an Executive Council of nine members, were chosen more and more exclusively from the group of English placemen whom the Governor found in control on his arrival. It was natural that this should be so. The officials were men of the Governor's own race and country, spoke his language, moved in the same social sphere as he. Moreover, they were strongly entrenched in office, and the only men in the colony with the ability, experience, and prestige required of those who fill the high positions and wield the powers of government. As there were few such men in the colony, from their ranks were also recruited the Legislative Councillors, of whom there were to be at least fifteen in Lower Canada. Two-thirds of the Executive Councillors had seats in the Legislative Council. (2) The highest judicial powers were likewise concentrated in the hands of the oligarchy. Any judge might be

(2) A. G. Doughty and A. Shortt (eds.), Canada and its Provinces (Toronto, 1914), IV, 454.

appointed to either Council; the two Chief Justices of the province were always members. Since the Executive Council had power to act as a Court of Appeal, it frequently happened that a judge sat in appeal against his own judgment delivered in an inferior court. Besides its advisory and judicial activities, the Executive Council supervised the auditing of the public accounts and the granting of waste lands. Their administration of the latter department gave ample opportunity, not neglected, for the evasion of the law, and the accumulation of the choicest land in their own hands and in those of their friends. The consolidation of power in one group was rendered doubly dangerous by its lack of that intimate connection with the fundamental interests of the country which has traditionally inspired the aristocracy in England.

In contrast to the Council, the Assembly, elected by the people, the mass of whom were uneducated tradesmen and farmers, consisted largely of representatives drawn from the lower strata of society. The Constitutional Act fixed the number of members in Lower Canada at fifty; a provincial statute of 1829 increased it to eighty-four. (3) Any resident of the province who was a British subject by birth, conquest, or naturalization, and who was not a clergyman or a member of the Legislative Council, was eligible for election to the

(3) For purposes of representation, the first administrator of Lower Canada, Sir Alured Clarke, divided the province into districts or counties, of which eighteen sent two representatives each to the Assembly and three (Gaspé, Bedford, and Orléans) one each. The towns of Montreal and Quebec had four representatives each; Three Rivers two, and William Henry one.

Assembly.

The franchise established for the Canadas by the Constitutional Act was as wide as that in any of the boroughs of England, and of course, as a whole, much more uniform. The qualifications were: in the counties, ownership of land in freehold, en fief, or en roture, of the yearly value of forty shillings; and, in the towns and townships, ownership of a house and lot of the yearly value of £5 or payment of an annual rental of £10. Application of such a franchise to a country where equality of circumstance prevailed to the extent it did in Lower Canada, amounted almost to the establishment of universal manhood suffrage. There were scarcely five individuals in one hundred of mature age who did not enjoy the franchise. Taking the country districts alone, its application was even wider. Nearly every head of a family possessed a farm, and every farm exceeded forty shillings yearly value, so that scarcely one farmer in a thousand was excluded from the vote. (4)

The character of the inhabitants who exercised this remarkably wide franchise was utterly incompatible with government through representative institutions. In the first place, since the dissolution of the Jesuit order, educational facilities in the country had been far from adequate. With the Catholic church and private societies rested the important task of instructing the youth of the province. Except for the almost ineffectual foundation of the Royal Institution in 1801, the Government had assumed no responsibility in this regard. Only the two grammar schools at Quebec and Montreal received

(4) Craig to Liverpool, May 1st, 1810, in Doughty and McArthur, Constitutional Docs., 1791-1818, p.397.

permanent assistance from ~~the~~ public funds. The result was that, ^{scarcely} any of the habitants, who formed the bulk of the population, could read or write. Secondly, the electors were, at least in 1791, totally ignorant of business affairs and equally unversed in the complicated process of governing a country. The Constitutional Act brought them their first experience with representative institutions, or indeed with any liberal form of administration. Long accustomed to the despotic French government, which provided no soil for the growth of political ambitions, they remained perfectly contented to obey like children the laws promulgated by the absolute authority set over them by Providence. Such were the men who exercised the franchise in Lower Canada, and such were the men who at times found themselves sitting in the House of Assembly and participating by their vote in proceedings of whose significance they had but the vaguest notion.

However, in this same House of Assembly, soon after its creation, appeared representatives of the habitants who were neither apathetic towards political affairs nor unconscious of the significance of their presence in that body. Not every son of an habitant was content to follow the humble occupation of farming a few acres of land along the St. Lawrence. If he showed greater quickness than his brothers, he might be sent to one of the Catholic seminaries, of which there were half a dozen in the province. From such an institution he sometimes emerged as a priest, but more frequently as an advocate, notary, or surgeon, the only professions not controlled by official patronage. Returned to their native villages, these partially educated

Frenchmen found themselves possessed of an immeasurable influence over their more illiterate associates, and, since their professions soon became greatly overstocked, they lacked sufficient practice to occupy their time and attention. (5)

The only outlet for their attainments, energy, and awakened ambition, was politics; the inevitable result, since they were excluded from appointed offices, was their election to the Assembly. Making use of their extraordinary prestige among the masses, which enabled them to move the electorate of their community as one man in whatever direction they chose, they secured and permanently retained the majority of the seats in that House to the exclusion of the more able and experienced English representatives. A description of the Assembly by Governor Craig in a letter to Lord Liverpool of May 1, 1810, although colored by the former's prejudices, gives some indication of the complexion of the House at that time. He said:

The numbers of English in the House has never exceeded 14 or 15; in the last two Parliaments there have been 12; in the present there are ten. Some of these have of late come from a pretty low step in the scale of society, but in general they are composed of two, or three avocats, about the same number of gentlemen possessing landed property, and the remainder of merchants of character and estimation. Upon the first establishment of the House, the few Canadian gentlemen that existed in the country stepped forward and some were elected, but they soon found that nothing was to be gained by it the House has ever been as it is now, in great proportion as to the Canadian part filled up with avocats, and notaries, shopkeepers, and with the common habitants, as they are called, that is, the most ignorant of labouring farmers, some of these can neither read nor write. In the last parliament there were two

(5) Lord Durham, Report, II, 33. Durham's view of the avocats, however, was probably affected by his dislike of the French race in general.

who actually signed the Roll by *marks*, and there were five more, whose signatures were scarcely legible, and were such as to show that to be the extent of their ability in writing at present they are completely in the hands of the party which leads the House. Debate is out of the question, they do not understand it, they openly avow that the matter has been explained to them the night before, by such and such persons, and they invariably vote accordingly. . . .

Of the party who had the House, I have already had occasion to speak They consist mostly of a set of unprincipled avocats, and notaries, totally uninformed as to the principles of the British Constitution or parliamentary proceedings, which they profess to take for their model, with no property of any sort, having everything to gain, and nothing to lose by any change they can bring about (6)

The party in power, described by Craig, was quick to seize every opportunity, of airing their views in the Assembly, views that became more and more extravagant as the possibility of their being called upon to put them into effect became more remote. Naturally, they were not content merely to attend the sessions of a hobbled Assembly and amuse themselves with expressions of opinion which fell on the deaf ears of an unsympathetic Executive. They, the representatives of some 225,000 Frenchmen, resented their exclusion from office for the benefit of the representatives of a mere 20,000 British. They resented the disproportionate influence of an Executive possessing the power of veto over their legislation, and controlling the vital resources of the country which they considered as belonging to them, les enfants du sol. (7)

The conflict between executive and legislative authorities, which inevitably rises from the granting of representative institutions and the simultaneous withholding of responsible government, was intensified in Lower Canada by two other sources of aggravation, one cultural and one economic. In 1774

(6) Doughty and McArthur, Constitutional Docs., 1791-1818, pp. 389 - 390.

(7) In 1810.

the British Government, as a matter of policy, acknowledged the right of French-Canadian nationalism to a free and unmolested existence. In 1791 it invested the Government of French Canada in the hands of a hostile British party. The French became afraid for the continuance of their cherished religion, laws, and customs. They clung to them more and more tenaciously, not because of their intrinsic value, but because of their significance as indications of French nationality. The English wished to amend and improve the laws so as to bring them into harmony with economic and intellectual progress and with the peculiar conditions of colonial life. Under different circumstances, the French would probably have themselves instituted such changes, as had been done in France, but now they resisted them as a feature of political strategy. Being forced into an attitude of self-defence, they elevated systematic reaction into an ideal, to which they deliberately sacrificed the general welfare of the country and their progress as a people.

Unfortunately such a policy had a more disastrous effect upon commerce, in which the English were chiefly interested, than upon agriculture, in which the French were engaged. The former, a shrewd, progressive, enterprising group of merchants, clamoured loudly for measures to permit the exploitation of the resources of the country -- new methods of cultivation, taxation for local improvements and public works, reform of the antiquated laws and inefficient judicial system, encouragement of immigration and the establishment of an educational system. The English despised the ignorance and backwardness of the French

peasants; they chafed at the idea of being thwarted by an Assembly of men far less able and experienced than themselves; they stormed at the injustice of having to live and transact their business under laws created for use in sixteenth-century France.

The basic economic antipathy of the two races sent offshoots into every sphere of colonial life. Socially, its effect was to put an end to all intercourse between the two races. The British made no pretence of concealing their contempt for the French race and customs, and the French smarted under their jibes and snubs. "The line of distinction between us is completely drawn," declared Craig to Liverpool, May 1, 1810. (8) "Friendship and cordiality are not to be found - even common intercourse scarcely exists - the lower class of people to strengthen a term of contempt add Anglois - and the better sort with whom there formerly did exist some interchange of the common civilities of society have of late entirely withdrawn themselves." (8)

Politically, the economic and racial rivalry resulted in the formation of two parties, each of which entrenched itself in one branch of the Legislature. The British merchants joined forces with the English official group, and contrived to obtain possession of the majority of the positions at the disposal of royal patronage. Their stronghold was in the Councils, which left the French party no alternative but to set up their defences in the Assembly. There, under the leadership of the Speaker, they had everything pretty much their own way. In 1791, there

(8) Doughty and McArthur, Constitutional Docs., 1791-1818, p.388.

were four French on the Executive Council, and seven on the Legislative Council, ⁽⁹⁾ but as the struggle increased in intensity fewer and fewer French were admitted to these branches, and those who were there became traitors in the eyes of their compatriots. A corresponding decrease in the number of English returned to the Assembly took place. Executive Councillors, at first elected to the Assembly, no longer commanded the confidence of the people. The Government was thereby deprived of the means of communicating with the Assembly, explaining its policies, and guiding the deliberations of the Lower House.

The mere act of clearing the enemy from their fortress was not a strong enough measure for the popular party, which was taking the offensive in this conflict. They proceeded by various means to increase their resources and extend their influence. Ignoring their limitations as a colonial Assembly, they adopted and even elaborated upon the tactics used by the British House of Commons in a similar struggle. In general, the Assembly claimed the right to all the privileges enjoyed by the British House, a claim whose validity was open to question. In 1815, a decision of the Law Officers of the Crown declared that a colonial Legislature was only entitled to such privileges as were specifically bestowed upon them by Parliament or as were "directly and indispensably necessary to enable them to

(9) Instructions to Lord Dorchester as Governor of Lower Canada, Sept. 16, 1791, ibid., pp.14 and 16.

perform the functions with which they were invested, and therefore may be fairly said to be incidental to their constitution." (10) The privileges which came within the scope of this definition were stated to be: personal liberty, freedom from arrest in civil cases, power to commit for acts of contempt, freedom of debate on laws and bills, power to expel a member convicted of a crime, the privilege of deciding upon the right of sitting in certain cases, the right to regulate their own proceedings consistently with the statute which constituted them. In spite of this decision, in spite of the protests of the Executive, the Assembly persisted in putting forth claims in excess of these recognized privileges.

There were in particular three claims which formed part of the popular program from the beginning of the struggle. One was the attempt to give the force of law to resolutions of the Assembly. The first use of this expedient was in connection with the exclusion of judges from sitting in the House of Assembly. The presence of the judges, particularly of Judge de Bonne who consistently supported government measures, had become abnoxious to the popular party. In 1808, a bill declaring judges ineligible to sit in the Assembly passed that House by a vote of 22 to 2, only to meet defeat in the Council. A word from the Colonial Office persuaded the Council to accept a new bill to the same effect, but with an amendment postponing its operation to the next session. The Assembly immediately carried a motion declaring Judge de Bonne incapable of sitting or voting in the

(10) Opinion on the Privileges of the House of Assembly and on the Casting Vote of the Speaker of the Legislative Council, December 30th, 1815, Doughty and McArthur, Const. Docs., 1791-1818, p. 481.

House, an action which was clearly a breach of constitutional right and one which even the British House of Commons would not have attempted. An Act of 1811 definitely excluded judges from the Assembly, and this objective was replaced on the French program by that of disqualifying the Chief Justices and justices of the Court of King's Bench from sitting in the Legislative Council.

A second demand of the Assembly was the right to appoint an agent to represent the province in London. Actually, the agent was intended to represent the House of Assembly, receiving his instructions from that body. His function would be to present the views of the majority as represented in the Assembly, on the assumption that only the opinions of the English minority represented in the Councils reached the British Government through the Governor. The Legislative Council refused to pass bills providing for the appointment of such agents, maintaining that the Governor was the only constitutional medium for conveying addresses to the King. Moreover, they insisted that an agent, if named, should represent both branches of the Legislature, not merely the Assembly. In accordance with this claim, they refused to sanction the payment of expenses for the various agents whom the Assembly persisted in naming from time to time. (11)

Between the years 1812 and 1817, the French-Canadian

(11) See Resolutions of the Legislative Council on the Right of the House of Assembly to appoint a Special Agent for the Province, Feb. 28, 1814, ibid., pp. 457 - 458.

party, for the time being under the influence of James Stuart, adopted impeachment of public officials as one of their rights. Stuart, disgruntled by his dismissal from the office of Solicitor-General, persuaded the Assembly to pass articles of impeachment against Chief Justice Sewell, whose brother had superseded Stuart as Solicitor-General. The charges included poisoning of the Governor's mind against the Canadians and violating the legislative authority of the Parliament of the province by introducing certain "Rules and Orders of Practice" into the courts. At the same time, James Monk, Chief Justice of the district of Montreal, was accused of having sat in judgment on cases in which his advice had been previously given. Unfortunately, Sewell was allowed to appear before the Privy Council in England at the expense of the British Government, while the Assembly was prevented by the Legislative Council from sending an agent to present their case in London. The Privy Council declared the charges unfounded. The Assembly refused to accept their decision, and continued to press the charges against Sewell with such vehemence that the Governor, Drummond, was ordered to resort to dissolution of the House to put an end to their clamors. Although impeachment was definitely beyond the pale of a colonial Legislature, the Assembly of Lower Canada continued to make use of this device, from time to time, to attack public officials who gave evidence of hostility towards them.

A fourth, and by far the most important claim ever put forward by the Assembly, was that of control over all revenues raised within the province, but it was not asserted with any great energy before 1818.

In its efforts to thwart the pretensions of the Assembly, the Legislative Council was able to remain within the letter of the constitution. Its chief weapon was the right to veto any bill passed by the Assembly. The Council used this power so freely that it degenerated from a healthy criticism of ill-considered legislation to a degrading subserviency to the wishes of the Executive. The result was virtual paralysis of the legislative power of the Assembly on all the numerous questions concerning which there was disagreement between the two bodies. The intention of the Colonial Office, in providing for a Legislative Council, had been to create a body which should exercise functions similar to those of the House of Lords, and also protect the British minority, provide a guarantee for the maintenance of the British connection, and safeguard the authority and prestige of the Governor. By the use which it made of these high powers, the Council soon brought itself, and the Governor who permitted its misconduct, into contempt.

After the definite alignment of parties had taken place, the Governor, obliged as he was to become the leader of one of the parties, could not conciliate one group without antagonizing the other. Sir James Craig, Governor from 1807 to 1811, was the first to come into open conflict with the Assembly. Although never exceeding his constitutional powers, Craig performed his duties in a curt, autocratic manner, utterly devoid of tact and diplomacy. In proroguing the session of the Assembly which expelled Judge de Bonne, he soundly berated the House in terms which called forth a reprimand from the Colonial Office.

He said:

You have wasted in fruitless debates, excited by private and personal animosity, or by frivolous contests upon trivial matters of form that time and those talents, to which, within your walls, the public have an exclusive title. This abuse of your functions you have preferred to the high and important duties which you owe to your sovereign and to your constituents; and you have, thereby, been forced to neglect the consideration of matters of moment and necessity which were before you, while you have, at the same time, virtually prevented the introduction of such others as may have been in contemplation. If any proof of this misuse of your time were necessary, I have just presented it, in having been called on, after a session of five weeks, to exercise his Majesty's prerogative of assent, to only the same number of bills, three of which were the mere renewal of acts to which you stood pledged, and which required no discussion. (12)

The Assembly deeply resented this speech, declared it to be a violation of the privileges of the House, and moved a resolution to that effect. The popular party was even more violently aroused by Craig's action in 1810 in seizing the press of their paper, Le Canadien, and arresting the printer and three contributors on the charge of treasonable practices. The men were almost immediately released, with the exception of Pierre Bédard, one of the most prominent leaders of the Assembly at this time, who refused to admit his guilt. The Assembly, during the session of 1811, demanded his release as a matter of privilege, although their privilege of freedom from arrest did not extend to criminal cases. Craig refused to comply with the demand, even retaining Bédard until after the close of the session to prevent his release being ascribed to the interference of the Assembly.

(12) Quoted in Robert Christie, A History of the Late Province of Lower Canada (Quebec, 1848), I, 284.

The war of 1812-1814 which came after Craig's withdrawal from the country gave the French an opportunity to prove that his charges of disloyalty were quite unfounded.

Craig's successor, Sir George Prevost, followed an entirely different policy, and one which was highly successful in winning the friendship of the French. His conciliatory manner and his evident confidence in their loyalty, shown by his inauguration of the policy of opening provincial patronage to their party, (13) elicited the reciprocal good-will of the Assembly. The latter, however, did not meet his concessions with concessions of their own. They continued their discussion of privileges and rights, and neglected the opportunity, which their momentary supremacy gave them, to enact constructive legislation as proof of their qualification for the duties of representatives. Moreover, Prevost had made bitter enemies of the Legislative Councillors and their friends.

Sir John Sherbrooke was a rare example of a Governor who managed to keep on good terms with both parties. He possessed greater tact and much deeper political insight than any of his successors. It was unfortunate that his administration was of such short duration. (14) He rendered two services during his term of office: he gave the Colonial Office a valuable analysis of the Canadian situation and offered it sound advice with respect to policy; and he temporarily won over the popular

(13) Pierre Bédard was appointed judge at Three Rivers, and Olivier Perrault, the Advocate-General, was promoted to the King's Bench for the district of Quebec.

(14) July, 1816 to July, 1818.

party to the support of the Executive. When Sherbrooke arrived, the French-Canadian party was under the leadership of James Stuart, who had first introduced to them the device of the British House of Commons of impeaching public officials, and who was still inciting them to attacks on the Chief Justice. There was, however, a section of the party under Louis-Joseph Papineau opposed to any action which would invite further dissolutions. During a temporary absence of Stuart from the Legislature, Sherbrooke took advantage of the opportunity to detach Papineau's party from Stuart. Papineau had been Speaker of the Assembly since 1815, but he did not receive a salary. When an address was presented to the Governor requesting the grant of a salary to the Speaker of the Assembly, Sherbrooke made haste to consent, on condition that Sewell, the Speaker of the Legislative Council, should receive similar consideration. The Governor's terms were accepted; the House was temporarily pacified; and, when the question of the impeachments was next considered, Stuart found himself deserted by the majority of the party which during the two previous Parliaments had followed his lead. This coup d'état marked the beginning of the long and unbroken ascendancy of Papineau in the French-Canadian party before the uprising of 1837. Stuart, unquestionably the ablest man in the Assembly, retired from public life and, until his appointment as Attorney-General in 1822, remained in the political background.

The correspondence between Sherbrooke and Bathurst reveals some of the danger zones in the political situation in

Lower Canada in 1818, and some of the blunders and misconceptions in the policy of the British Colonial Office. Hitherto, the only mode which the Governor had of resisting the Assembly was dissolution in the hope that the electorate would return more favorable candidates to the House. Sherbrooke pointed out that the frequent use of this expedient had had a decidedly detrimental effect upon the already strained relations of the Governor with the Assembly. It aggravated the evil and increased irritation without achieving its purpose. Where the Crown possessed no means of strengthening its influence in Parliament or in the country, said Sherbrooke, it was folly to expect any improvement in the composition of the House after a premature dissolution. (15)

Bathurst fully concurred with Sherbrooke in the opinion that there was but little reason to expect an improvement in the composition of the Assembly from a general election. The Executive, Bathurst realized, must now seek other and more conciliatory means of keeping the machinery of government in motion, especially since the finances of the province were in a precarious state. "The ground of my instruction to Sir Gordon Drummond," said Bathurst, "was the belief that it would be possible in time of peace to defray from the permanent revenue of the Province without assistance from the Legislature the necessary expenses of the Civil Government and that consequently it would not be necessary to keep the Assembly in session if when met they were disposed to recur to the subjects

(15) Sherbrooke to Bathurst, July 15, 1816, Doughty and McArthur, Const. Docs., 1791-1818, p.490.

which have already been considered and decided by His Royal Highness the Prince Regent in Council." (16) Sherbrooke had informed Bathurst that the permanent revenue of the Province was no longer adequate to meet the growing expenses of government. In 1818 for the first time the Governor was obliged to call upon the Assembly to supply the deficiency between revenue and expenditure.

Two methods were suggested by Bathurst for cultivating the necessary spirit of geniality in the Assembly: conciliation of the Roman Catholic laity through the appointment of their bishop, Monseigneur Du Plessis, to the Legislative Council and through other concessions to the Church; and, secondly, the slight relaxation of discriminations against the French in the making of official appointments. (17) These remedies indicate that Bathurst considered his problem to be merely that of pacifying a refractory Assembly, and that he had not put his finger on the real source of discontent, which was want of confidence in the Executive Government. Bathurst's insistent support of those very officials whom the popular party had come to distrust destroyed the efficacy of the two concessions he was prepared to make. He reminded Sherbrooke that "His Majesty's Government have had a constant resource on ordinary occasions

(16) Bathurst to Sherbrooke, Sept. 30, 1816, ibid., p.491.

(17) Bathurst to Sherbrooke, Dec. 7, 1816, G.8, p.178, Report of the Public Archives of Canada for 1930, p.53.

to the firmness and temper of the Legislative Council nor is there any reason to doubt that they will continue as far as in them lies to counteract the more injudicious and violent measures of the House of Assembly." (18) In the same dispatch in which he outlined his policy in connection with the Roman Catholic clergy, Bathurst included the following significant sentence which sums up the attitude of the Colonial Office in 1818: "I always except the consenting to any law which can in any way increase the power of the House of Assembly, or make the Government in the least more dependent on it." (19)

The pretensions of the antagonists in this conflict are equally comprehensible to a disinterested and impartial observer. On the one hand, a Colonial Office, represented in the colony by a British Governor and a British official party, newly emerged from a revolution in a neighbouring colony, haunted by the spectre of democracy which had been lifting its head from time to time in Europe; on the other hand, a considerable French population, recently transferred to the custody of a foreign power, jealous of their institutions and customs, fearing the heel of the oppressor. Quite reasonably, the Colonial Office was reluctant to surrender an unprecedented amount of power to an Assembly of untried colonials, descendants

(18) Bathurst to Sherbrooke, June 7, 1816, ~~in~~ Doughty and McArthur, Constitutional Docs., 1791-1818, p.489.

(19) Bathurst to Sherbrooke, July, 1816, Q.136A, p.239, quoted in Shortt and Doughty, Canada and its Provinces, III, 284.

of a race which was just emerging from the cloud of suspicion created by Robespierre and by Napoleon. Quite naturally, the French aspired to ascendancy in government in order to ensure the preservation of their institutions. Deceived like so many of their contemporaries by the apparent authority of the House of Commons, the French could not see that they were demanding from England what did not exist in England itself, that as long as the Commons remained "unreformed" the Whigs in the House of Lords controlled all branches of Parliament. And so, conflicting viewpoints, obstinacy and prejudice on both sides, perpetuated the struggle, paralyzed legislation, and jeopardized the normal progress of the country.

In 1818, when John Neilson was first elected to the Assembly, the struggle was entering a new and more critical phase. The Colonial Office had just recognized the existence of an urgent problem in Lower Canada, and had made the first of a long series of piece-meal concessions, interspersed with blunders and neutralized by a stubborn refusal to recognize the real issues. Emboldened by their few gains -- minor concessions to the Roman Catholic Church, the exclusion of judges from the Assembly, a slight relaxation of the prejudice against men of French nationality holding office -- and angered by the frustration of their efforts to secure the appointment of an agent and to impeach unpopular members of the judiciary, the French-Canadian party in 1818 was preparing to return to the attack with renewed vigour. Louis-Joseph Papineau had just assumed the leadership of the party which he was to direct from the Speaker's chair for nearly twenty years. Most important of all, the issue of control over revenue had just been raised by the first application of the

Governor to the Assembly for funds to aid in meeting the expense of civil government.

Because the year 1818 marked the beginning of a definite period in the political history of Lower Canada, it was fitting that it should also be the year when a man of John Neilson's calibre embarked on his public career. It was still more opportune that he should appear at the very time when the popular party's master genius, James Stuart, had just fallen from grace, leaving the party deficient in that political wisdom and soundness of judgment which Papineau so conspicuously lacked. To the advantage of the French party, Neilson elected to act with a small group of British liberals who refused to take shelter behind an official bureaucracy and who accordingly made common cause with the French in their struggle for popular government.

CHAPTER III

NEILSON'S ADVOCACY OF SELF-GOVERNMENT

When John Neilson became a member of the Assembly in 1818, he was called upon to form an opinion on three problems which challenged the attention of every thoughtful man in the Canadas. These were the problems of colonial status, control of finance, and administration. Neilson's attitude towards these problems, as far as it is revealed in the available material, will be considered in this and the two succeeding chapters.

The problem of colonial status involved the relationship of each of the Canadas to the Mother Country, as well as the relationship between the provinces themselves. Neilson took his stand on both questions, not with an eye to the future, but on the basis of what would be most advantageous to the province at that time and most acceptable to the people. It was characteristic of his habits of thinking to focus all his attention on the remedy of existing ills and the preservation of existing blessings, leaving the future to take care of itself. Hence, he would never have countenanced the sacrifice of the precious right of provincial self-government to the ideal of a nation, strong, wealthy, illustrious, to be erected out of the possessions of England in America. He entertained no ambitions

for his province which would entail her incorporation in a grand scheme of federation, such as conceived by Chief Justice Smith and Lord Dorchester, or which would lead to her absorption into a homogeneous national unit to be composed of all the British North American colonies. Spurning the long view, he took for his objectives nothing more imposing than the maintenance of the individuality of Lower Canada and the contentment of her people as inhabitants of a British possession.

Neilson's formula for attaining these ends was borrowed in its broad outline from the system which was operating with apparent success in the United States. In answer to questions put to him by the Select Committee of the British House of Commons in 1828, Neilson gave it as his opinion that Upper Canada, Lower Canada, and the other British provinces in America ought to stand in the same relation to the government of England and to each other as the different States of the American Union stood to the general American government and to each other. In carrying out the analogy, London would correspond to Washington, the Provincial Legislatures to the State Governments, the British Government to Congress, and the Colonial Agent in London to the American Congressmen. (1) Neilson admitted that the British Government's renunciation of the right to levy taxes in the colonies destroyed the analogy to some extent, since the Congress of the United States had the power to impose taxation anywhere in the Union. But, he pointed out, actually Congress had gone no further in exercising that power than the regulation of trade,

(1) Evidence of Neilson, Report of the Select Committee on the Civil Government of Canada, July 22, 1828 (Quebec, 1829), p.126.

nearly all its revenues being derived from duties on importations. Similarly, the British Government, while renouncing the right to levy taxes in the colonies, should always retain the right to regulate trade. If it did not retain this power, the colonies might, unintentionally perhaps, levy duties which would place British products at a disadvantage in the Canadian market. The colonies would then cease to have any value to Great Britain and the British connection would be endangered. (2) As long as the colonists had the opportunity of being heard in England, Neilson was confident that both colonies and Mother Country would benefit materially from their association under the existing system.

I think that there would be no danger of any mischief being done, if there was some person here so as to enable all parties to be heard; there is no opposition of interest between the colony and the mother country; it is an advantage to this country to have colonies that are subject to her regulations of trade, and where she can get things independently of other countries, ^{thinking that can never place them at all in} The only opposition is the not being understood to one another, and particularly the touchiness of all colonies; they are like all children, more touchy than their fathers. (3)

The merits and demerits of this plan of imperial organization, its feasibility and its desirability, have no direct bearing on the present subject. Our interest lies in the significant deduction which may be drawn from it and applied to Neilson's attitude on many important public issues, namely, that every cultural unit should be absolutely untrammelled by outside interference in the administration of its affairs. In inter-

(2) Ibid., p.131.

(3) Ibid., p.126.

colonial relations, an occasion for applying the principle was afforded by the unfortunate attempt made in 1822 to unite the Legislatures of Upper and Lower Canada. Neilson's opposition to the measure was determined and explained by his insistence on the principle of self-government for each of the provinces.

This abortive scheme of union evidently originated with a group of francophobes, composed of Montreal and Quebec merchants and of the bureaucrats, and represented in England by Edward Ellice, proprietor of the seigniory of Beauharnois and a man of some influence with the Colonial Office. It was never believed in Lower Canada that the scheme had originated with the Imperial Parliament or ministers; there was no hesitation in laying the blame at the door of the authorities in Lower Canada. (4) In his correspondence with Papineau, Neilson hinted that he believed England was the dupe of the officials in Canada who hoped by the Union to secure themselves more firmly in power. (5) There was, however, a circumstance which induced the ministry in England to lend a willing ear to the proposals of the English commercial interests and their agent, Ellice: the customs dispute between the two provinces. Upper Canada's geographical position placed her in complete dependence on Lower Canada for the levying of duties on imports. The two

(4) Ibid., p.128.

(5) "Si vraiment l'Angleterre avait, charitablement, le projet de nous préparer, à une réunion avec les Etats-Unis la mesure proposée serait sage comme moyen pour y parvenir. Mais l'Angleterre ne peut être que dupe à cette occasion." (Neilson to Papineau, June 22, 1822, Neilson Papers [photostat copy]).

"Si les ministres veulent conserver les colonies, à moins d'être dupés, ils ne peuvent pas vouloir l'union." (Neilson to Papineau, Nov.12, 1822, Neilson Papers [photostat copy]).

provinces could not agree on a division of the duties, so Upper Canada appealed to the Imperial Parliament for redress. Union seemed to offer a solution of the financial difficulties of Upper Canada. At the same time, the Imperial Government realized the advantages which would accrue to the colony from the enhanced prestige of a single government, and the greater facilities which would be afforded for defending the country and developing its resources. There was the added inducement of political unrest in the lower province, for which union might provide a remedy. Hence, the suggestions of Ellice attracted the attention of the British ministry, and without receiving any application from either of the provinces and without consulting them, the ministers set Charles Marshall, the Solicitor-General of Lower Canada, to work drafting a bill for union.

According to Neilson,⁽⁶⁾ even the supporters of union in Canada were opposed to the terms of this bill. It provided for a legislative Union. The newly formed Assembly was to consist of not more than one hundred and twenty members, sixty from each province. By a property qualification of £500 for members a guarantee was to be secured that the habitants and shopkeepers of Lower Canada would no longer determine the character of legislation for the province. Harmony between the Executive Council and the Assembly was to be secured by the provision that two members of the Council of each province were to have seats ex officio in the Assembly where they could

(6) ~~Ibid.~~ Report of Select Committee, p. 128.

explain the policy of the Government, but they were not to have the right to vote. The proceedings of the united Legislature were to be kept only in the English language, and after fifteen years English was to be the language of debate in the House. The supremacy of the Crown in ecclesiastical affairs was to be vigorously upheld, notably by enforcing its alleged right to share in the control of the patronage of the church. The first joint Legislative Council and Assembly were to consist of the existing members, the Assembly, thus constituted, sitting until July 1, 1825. No act to alter the number of representatives was to be passed unless by two-thirds of both Houses.

In this form the bill for union was introduced into the British House of Commons on June 20, 1822, by Wilmot Horton, the Under-Secretary of State for the Colonies. Owing to unexpected opposition from Sir James Mackintosh and to the lateness of the session, the Government decided not to press the measure at that time. To protect the financial interests of Upper Canada, until the union bill could be reintroduced at a later session, a separate act for the settlement of the customs dispute was passed. Canadians were thus given an opportunity to express their views respecting the project of union, news of which had reached Lower Canada just a week before the bill was introduced into the British House.

During the autumn and winter of 1822-23 there was much agitation in Lower Canada. Those opposed to the union formed themselves into Constitutional Associations, and drafted resolutions and petitions, which they energetically circulated

throughout the districts. The resultant documents, bearing over 60,000 signatures, were put into the hands of Louis-Joseph Papineau and John Neilson to be taken to London and presented by them as expressing the attitude of the Lower Canadians, exclusive of nearly all those of British origin. The same delegates were also entrusted with the petitions of the Upper Canadian anti-unionists.

John Neilson was one Lower Canadian of British origin who vehemently opposed union, especially on the terms proposed, and for a number of reasons. He opposed it as subversive of the existing constitution which, as good subjects, he believed they were bound to uphold; he was convinced that it would not settle the customs dispute or solve the racial and political difficulties of Lower Canada, which were professedly the results desired; finally, he believed it to be grossly unfair to the inhabitants of both provinces and especially to the majority of Lower Canada. (7) It is strange to find an Anglo-Saxon, and one who utterly despised all forms of racial prejudice, so roused by unselfish motives in defence of the French nationality and so zealous in its preservation. Yet no French-Canadian was more vigorous than Neilson in his protests against the union bill whose effect he believed would be to swamp the French and destroy the institutions guaranteed to them.

Le véritable but des principaux moteurs du plan ici est de s'assurer la maîtrise dans le pays, à leur profit, et se débarrasser de cette pauvre négative que la Constitution actuelle donne à la majorité des habitants et qui a souvent frustré des projets hostiles. Je dis pauvre négative;

(7) Neilson to Papineau, June 22, 1822, Neilson Papers (photostat copy), calendared in the Report of the Public Archives of Canada for 1913, p.129.

car c'est tout ce que la Constitution a donné aux Canadiens après trente années d'expérience. C'est le cas du seul agneau du pauvre que le riche lui arrache pour ajouter au luxe de son festin. Quel sort les habitants du pays auraient-ils espérer de gens qui vont de tel façon? (7)

Papineau himself would not at this time have used stronger language than did Neilson in writing to the former with regard to the union bill. The letter shows how completely Neilson identified himself with the interests of these people of a totally different race and culture.

The country will not submit to the injustice planned against us by a handful of intrigants who want to sacrifice to their own ambition the happiness of the Canadian people. These men whom chance has made so great in this country, and who would have remained in obscurity anywhere else, might well have remained content with the numberless preferments they now enjoy, without undertaking to rob the people of our province of their rights. Blinded by the most unfounded and unreasonable prejudices against our most cherished institutions, and nourishing as they do, in their hearts, and even openly manifesting utter contempt for the peculiar usages and manners of the Canadian people, they certainly are guilty of an abuse of power calculated to endanger the peace and tranquillity of the country. (8)

Moreover, in Neilson's opinion, the union would be unfair to both provinces for a reason to which reference has already been made; namely, that it would deprive them of the right of managing their own internal affairs. In discussing the attitude towards union before the Committee of the British House of Commons in 1828, Neilson said:

Upper Canada I believe to be clearly averse to it; they wish not to be troubled with us in the management of their internal affairs. The truth is, that every portion of the population in America desire as much as possible to have the management of their internal affairs confined within narrow

(7) Neilson to Papineau, June 22, 1822, Neilson Papers (photostat copy), calendared in the Report of the Public Archives of Canada for 1913, p.129.

(8) Neilson to Papineau, December 12, 1822, Quoted by A. D. De Celles. p.47.

limits. In the United States, wherever a state was extensive, they have divided it into several states for the convenience of local management. (9)

According to Neilson, the British Government would be taking a great risk in persisting in this measure. If this change were made without consulting the people, they would lose all confidence in the justice of the Government and the English Parliament. (9)

La liberté de nos personnes, la sûreté de nos biens et toutes les institutions du pays dépendent de la Constitution politique d'un pays; par le moyen de lois dérivés de cette Constitution on peut tout détruire, On nous mettrait donc dans le cas d'être privé de tout ce que nous avons de cher au monde sans nous en donner aucun avertissement, sans nous fournir la moindre occasion de nous faire entendre, et cela à mille lieux de chez nous dans un corps où nous ne sommes pas représentés et entièrement inconnus, et sur les représentations furtives des gens intéressés, qui se trouvent parmi nous et qui se partageraient nos dépouilles. C'est un injustice qui pourrait se répéter autant de fois que nous trouverions moyens de leur résister. Un pareil état de chose serait insupportable, quand bien même que les changements auraient été avantageux. Si jamais on s'y trouve exposé, j'espère qu'on fera bon qu'on n'est pas digne d'être traité de la sorte. (10)

The result, Neilson felt sure, would be to drive the colonies straight towards annexation with the United States. (11)

Neilson's argument against union was applied in detail to the terms of the proposed bill of 1822 in an admirable document presented to Wilmot Horton by Neilson and Papineau, shortly after their arrival in England in 1823. Of this mémoire, Garneau says: "Ce mémoire rédigé par M. Neilson, aidé par M. Papineau,

(9) Report of the Select Committee of 1828, p.125.

(10) Neilson to Papineau, June 22, 1822, Neilson Papers (photostat copy).

(11) Ibid. See also Neilson to Papineau, Nov. 12, 1822, Neilson Papers (photostat copy).

est l'un de nos papiers d'Etat les plus noblement et philosophiquement pensés que l'on trouve dans notre histoire." (12) Papineau's mind alone was certainly not capable of producing a document, so dignified in tone, so logical and convincing in its argument, so sane and judicious in its discussion of the issues involved.

The memorialists began by pointing out that they were the bearers of petitions signed by nearly seven-tenths of the population between the ages of sixteen and sixty in the two provinces. Proceeding to a consideration of their general objections to union, they argued that local Legislatures should not have jurisdiction over too vast a territory; that the distance between the Gulf of St. Lawrence and Lake Huron was 1500 miles, that communication was difficult, and, in certain seasons, almost impossible in several parts of Canada; that the members of the Legislature, in a province of such extent, would experience many inconveniences and would be required to make too many sacrifices to attend the sessions and give assiduous attention to their parliamentary duties.

La différence des saisons, la distance des lieux, les difficultés, les dangers et les frais de voyages au siège des Législatures réunies, dans le seul temps de l'année que le peuple ou ses représentants peuvent consacrer à leurs affaires publiques, font une masse d'obstacles qui ne leur laisserait qu'un vain simulacre de ce système de Gouvernement qui a été jusqu'ici suivi dans les Colonies anglaises (13)

(12) F.X.Garneau, Histoire de Canada (Quebec, 1882), III, 248, as quoted by Thomas Chapais, Cours d'Histoire du Canada (Quebec, 1921), III, 131.

(13) Observations de MM. E.-J. Papineau et John Neilson sur le projet de réunir les législatures du Haut et du Bas-Canada, Londres, 10 mai 1823, Appendices du Journal de la Chambre d'Assemblée du Bas-Canada, 1825, Appendice K, given by Chapais, Tome III, Appendice I, p.268.

Then, leaving aside considerations of place, season, and distance, they brought up a series of more serious objections, originating in the cultural differences of the two provinces. They put forth the following argument to prove the incompatibility of the two groups.

C'est un fait constant que, non-seulement les lois qui règlent les propriétés et les droits civils dans les deux Provinces, mais encore les coutumes, les habitudes, la religion et même les préjugés y diffèrent essentiellement. Les habitants de chacune d'elles tiennent fortement à toutes ces choses, dont la jouissance leur est solennellement assurée de la part de la Grande-Bretagne. Le plus sage, le plus désintéressé, le plus savant législateur, pourrait à peine amalgamer leurs codes respectifs sans danger pour les propriétés acquises sous ces lois différentes. Tout changement aux lois anciennes, toute loi nouvelle aura des rapports avec celles qui sont en force dans l'une ou l'autre Province, et, selon qu'ils affecteront l'un ou l'autre code, seront vus d'un oeil jaloux et préjugé, et adoptés sans connaissance suffisante par une partie au moins des membres de la Législature. Les Représentants des deux Provinces se trouveraient enfin forcés de faire des lois séparément pour chaque Province respectivement. Le gouvernement et les intérêts des deux Provinces demeurant distincts, et les dépenses des Colonies étant surtout pour les objets locaux, il n'est guère à supposer que les membres de la Législature réunie fussent toujours guidés par des principes de justice et d'équité dans l'assiette ou la distribution des impôts. La population des deux Provinces a malheureusement des intérêts différents quant aux impôts. . . . Il est difficile de faire la distribution du revenu colonial pour des objets locaux, dans un territoire même très-limité; comment la Législature coloniale pourrait-elle faire ce partage avec justice, entre deux Provinces distinctes, dont les habitants n'ont rien de commun si ce n'est le titre de sujets anglais. (14)

2 The justice of these criticisms was fully apparent in the period of Canadian history between 1840 and 1867, when the experiment of legislative union was put to the test.

Neilson and Papineau next proceeded to analyze the clauses of the proposed Act of Union in all its details. Their

(14) Ibid., pp.268-269.

chief objections, made largely in the interests of the French, were to the injustice of the representation, the proscription of the French language, and the interference of political authorities in the appointments to Catholic cures.

From the point of view of representation the bill appeared to Neilson and Papineau to favor Upper Canada. It provided that the existing number of representatives for each province should be retained. This meant fifty members for Lower Canada, as provided by the Constitutional Act, and forty members for Upper Canada, as provided by a provincial act of 1820. And yet the population of Upper Canada was only one-fifth that of Lower Canada. Moreover, by article eight, the Governor was permitted to add ten members to the representation of Lower Canada, who would almost certainly be chosen from the Eastern Townships, sympathetic by language, religion, and interests with Upper Canada. The petitioners, with an eye to the effect on their readers, argued against the clause by taking a parallel case from British history.

Si lors de l'union entre l'Ecosse et l'Angleterre, ou entre la Grande-Bretagne et l'Irlande, on eut annoncé au peuple anglais que l'Ecosse et l'Irlande, ou toutes deux ensemble, auraient dans la Chambre de Communes un nombre de membres égal à celui de l'Angleterre, et avec une restriction semblable, il est probable qu'il aurait éprouvé une inquiétude aussi vive que celle causée par ce Bill dans le Bas-Canada Par le Bill en question, on donne à une province distincte, ayant réellement des intérêts différents, n'ayant que le cinquième de la population de l'autre, pas plus du cinquième d'électeurs, et moins d'un cinquième des richesses de l'autre, on lui donne un pouvoir égal dans la levée de l'impôt et dans sa distribution pour les dépenses locales. (15)

Worse than that, the laws, national and religious rights, and

and special privileges of the Lower Canadians would be endangered by union with Upper Canada under this system of representation.

The delegates were no less vehement in their protests against article twenty-four which abolished French as an official language. Their argument was an appealing one.

Il n'y a peut-être pas dix membres de la Chambre actuelle d'assemblée dans le Bas-Canada qui n'entendent pas l'anglais; plusieurs le parlent avec facilité. Il n'y a pas un homme de quelque rang et de quelque fortune dans la colonie qui ne fasse apprendre l'anglais à ses enfants. C'est ainsi que les peuples changent avec le temps et les circonstances. Mais la langue d'une mère, d'un père, de la famille, de ses amis, de ses premiers souvenirs, est chère à tout le monde; et cette interférence inutile dans la langue du peuple du Canada a été vivement sentie dans un pays où cette langue a été, sans contredit, une des causes qui ont le plus contribué à conserver cette colonie à la Grande-Bretagne à l'époque de la rébellion des Américains. (16)

The representatives from Lower Canada pointed out also the injustice of article twenty-five, pertaining to the appointment of clergy. They declared that it was an ill-concealed attack against the liberties which the Catholics had hitherto enjoyed under British rule, and which had been guaranteed to them by the Articles of Capitulation, the Treaty of Paris, the Acts of Parliament, and the liberal policy of the Government of England. They explained that the Catholic Bishop in Canada was approved by the Crown before his appointment by the Pope; hence the State was safeguarded against any danger which might be feared. Without further jurisdiction, the Government had always found the Catholic clergy devoted to the maintenance of the British connection. The Bishop and his predecessors had always

(16) Ibid., p.276.

exercised the right of appointment and dismissal, and they were supported in this right by an edict of the French King of 1699, and the testimony of such eminent jurists as Blackstone and Héricourt. Now the Act of Union required that the Governor should give his consent before an appointment to an ecclesiastical office could be recognized. The inevitable result of the clause would be the disappearance of the Bishop's authority and disorders in the discipline of the Church. For example, should Governor and Bishop disagree, a priest could legally collect tithes after having been forbidden by his ecclesiastical superior to do so. The apprehension produced among the people by such a clause would not fail to give rise to that unfortunate antagonism between Protestants and Catholics from which, so they claimed, ~~had~~ Canada had until that time been exempt.

Neilson and Papineau then stated their opinion that the commercial disagreements between the two provinces, which appeared to be the only legitimate reason for urging union, could be satisfactorily settled under the existing constitution. They pointed out that the existence of that constitution for thirty years without any commercial difficulty arising was sufficient proof that these difficulties were not the inevitable result of the division of the old Province of Quebec. The nations of Europe and the states of the American union were examples of peoples living on the banks of the same river without the necessity of uniting under the same government. If this policy were followed to its logical conclusion, Canada should be joined to the United States. In conclusion they urged that, if the proposal for union were brought forward at any time in the future, the policy be submitted to a plebiscite of the people and the Legislature of Lower Canada be permitted to name commissioners to

present the case of the inhabitants of that province in favor of the continuance of the existing constitution.

The skilful representations of Papineau and Neilson did not fail to have their effect on Wilmot Horton of the Colonial Office. The delegates received his assurance that the obnoxious measure would not be reintroduced. Neilson returned home to receive the grateful acknowledgements of the French-Canadians for this his first great service to them and to the province. In subsequent years, he always opposed union of Upper and Lower Canada as a violation of his fundamental principle that a distinct and separate group of people should not be molested in the management of their own affairs by amalgamation with any other group; the result, in his opinion, would be a futile sacrifice of the best interests of both.

Neilson was equally insistent on the application of this principle of self-government to relations between the Mother Country and the colonies. Convinced as he was of the value of the British connection to Lower Canada, he would yet reduce that connection to the lowest point commensurate with its continuance. The activities of the British Government in colonial legislation should be confined to the arbitration of differences of opinion between the executive and the representative branches of the province, and to the investigation and elimination of abuses when its assistance was requested. "The less," said Neilson, "this country has to do in legislative measures affecting the colonies, the better it is both for the colonies and this country." (17) The penalty of frequent

(17) Evidence of Neilson, Report of the Select Committee of 1828, p.125.

interference would be unnecessary misunderstanding such as had occasioned the revolt of the American colonies. Neilson believed that a similar occurrence might easily take place in Lower Canada, and in 1825 he warned Sir Francis Burton, the Lieutenant-Governor, of the possibility.

Unless His Majesty's Government can detach themselves from that system of interfering too much with the affairs of the colony upon partial representations under the operation of which the old colonies were lost, things will undoubtedly before long be brought to the same point in the remaining North American Colonies. Nothing that they can do for the colonies would be half so agreeable as removing restrictions and letting them alone to settle their own affairs. No other system will give general satisfaction; but, on the contrary, prove an incessant source of irritation and alarm. (18)

It is evident that self-government was one of the goals for which Neilson was striving most earnestly. He hoped to attain it by the simple process of educating the British Government, of convincing it that the Canadians were worthy of being trusted with the management of their own affairs and that, in fact, government by a distant and ill-informed group of officials must perforce be inefficient and out of harmony with the needs of the colony.

A numerous people, the individuals of which gain their subsistence independently of a wealthier class, cannot be governed, but according to their own opinion of what is the most conducive to their welfare. That such a people should be so governed by persons residing three thousand miles off, and whom education and knowledge acquired under circumstances so different from those of the people they are to govern, entirely unfits them for governing in North America, is nearly impossible. Substituting individuals educated and raised in America to govern under their directions must still frequently expose the Government to

(18) Draft of a Memorandum addressed by Neilson to Sir Francis Burton, 1825, in Report of Public Archives of Canada for 1918, p.478.

be in opposition to the wants and wishes of the governed, and endanger its stability (19)

Constant in his faith in the good intentions of the British Government, Neilson believed that once it were brought to a realization of the true situation in the province, the chief obstacles to sound administration would be removed. However, the struggle was to be a long and an arduous one. Worse still, it seemed to end in failure because the people failed to justify the trust which the British Government was at last induced to place in them. The following quotation, from a paper drawn up by Neilson for Mackenzie in 1831, expresses the stringent demands which the former made upon both the British Government and the colonists in the struggle to be described in succeeding chapters.

The British Government is disposed to do everything that is reasonable for the North American Colonies. It is admitting that they must manage their own internal affairs, and will throw no obstacle in their way and will consent to see removed those that exist. All its good intentions must however fail if the people themselves fail; fail in that disinterested zeal for the general welfare, that power of steady determination in its pursuit and control of their own individual ambitions and interests, without which no people can govern themselves; but must be governed as the lesser evil. (20)

(19) Draft of instructions to D.B.Viger, as representative of the Assembly in England, April, 1831, Neilson Papers (photostat copy).

(20) Draft of paper dated May 1831, and marked Copied by Mr. M., Upper Canada, Neilson Papers, (Smith transcript).

CHAPTER IV

THE FINANCIAL DISPUTE

Any struggle for self-government inevitably centres about the all-important question of finance. Whoever holds the purse-strings, and thereby controls the payment of the salaries of officials and of the other costs of administration, is in a position to dictate the policy of those officials and to dominate the whole administration. Prior to 1818 the Assembly of Lower Canada tried to extend its influence in government by the devices of impeachment of officials and appointment of an agent in London. After 1818, however, it changed its tactics, and until 1831 concentrated most of its attention on the struggle to obtain control of the revenue.

The revenue of the province of Lower Canada may be divided into three classes. (1) The first was the Crown revenue derived from four sources: the hereditary feudal dues acquired from the King of France at the time of the Conquest and the proceeds from Crown property, such as land, the King's Posts, the King's Wharf, the St. Maurice Forges, and so on; monies derived from imperial statutes, notably the duties levied under the Quebec Revenue Act of 1774; the proceeds of provincial

(1) See D. G. Creighton, "The Struggle for Financial Control in Lower Canada, 1818-1831," Can. Hist. Rev., XII (June 1931), 120. ff.

revenue acts, of which £5000 sterling derived from licences and duties imposed by 35 Geo.III, c.8 and c.9 and all proceeds from 41 Geo.III, c.13 and c.14 were appropriated unconditionally to the use of the civil government by the terms of the acts; and finally the profits of justice. The second class, controlled by the Legislature of the province, was derived from provincial acts, the proceeds of which had not been appropriated for special purposes or which remained after provision for such purposes had been made. Beyond the control of either Crown or Legislature was the revenue derived from provincial acts and appropriated to definite and particular purposes.

The proceeds from each of these sources of revenue varied from year to year. (2) Always the unappropriated revenue far exceeded the Permanent Revenue. The Crown derived between £3000 to £6000 annually from the Casual and Territorial Revenues. The fines, seizures, and forfeitures accounted for only a few hundred pounds of the Crown Revenue. Its largest revenue was derived from the proceeds of the Quebec Revenue Act of 1774, which yielded from one-half to two-thirds of the total revenue at the disposal of the Crown. The returns from provincial acts permanently appropriated to the Crown, aside from the statutory portion of duties under 35 Geo.III amounting to £5000 sterling annually, were at first insignificant; but, while the licenses under 41 Geo.III remained negligible, the duties increased rapidly in value after 1825. The revenue appropriated to par-

(2) Ibid., pp.124-126.

ticular purposes under authority of provincial statutes yielded the smallest returns of the three classes. By far the largest proceeds were the unappropriated revenues at the disposal of the Legislature. The amount from this source was usually twice, and sometimes three times, as much as the total of the Permanent Revenue. Thus, while the Crown Revenue increased gradually, its growth was not spectacular and it never attained the proportions of the revenue at the disposal of the Legislature.

The financial policy of the British government with respect to the colonies was laid down in two important acts, the Quebec Revenue Act of 1774 and the Declaratory or Colonial Tax Repeal Act of 1778. The former act, which levied certain duties on imports into the colony, stipulated that the funds so raised should be applied by the Imperial Government, in the first place, "in making a more certain and adequate provision towards defraying the expenses of the administration of justice and of the support of civil government in the said Province." (3) The Colonial Tax Repeal Act declared that from and after the passing of the act the King and Parliament of Great Britain would not levy any duty or tax in the colonies, except duties for the regulation of commerce, the net produce of which should always be "paid and applied to and for the use of the Colony, Province, or plantation in which the same shall be respectively levied." (4)

(3) W.P.M. Kennedy (ed.), Statutes, Treaties, and Documents of the Canadian Constitution, 1713-1929 (Toronto, 1930), p.141.

(4) Ibid., p.168.

The import of these two clauses, which were reiterated in the Constitutional Act of 1791, was simply that the British Government in levying duties had no intention of exploiting the colonies, but merely wished to regulate trade and diminish the cost to the Mother Country of colonial administration. That cost was considerable, amounting in 1794 to two-thirds of the entire expenses, and was met usually by warrants issued on the Military Chest of Great Britain. Under these circumstances, it was not unnatural for the Governor and the Executive Council to manage the financial affairs of the colony without reference to the newly created Assembly. Until 1818, the Assembly participated in financial matters only to the extent of reading the annual statement of expenditure and revenue, which was submitted to them in accordance with a practice inaugurated by Lord Dorchester.

In the meantime, however, the unappropriated monies at the disposal of the Assembly had been accumulating. The balance in 1809, together with the permanent appropriations provided by provincial acts, would have been sufficient to defray all the expenses of government. (5) The province was in a flourishing state; there were no direct taxes; and the Assembly felt capable of assuming the whole financial burden of the colony. They offered to do so in 1810. Their offer was ignored by the Governor, Sir James Craig, as an evident effort to obtain control over the Government, prompted by antagonism to his policy. In

(5) Shortt and Doughty, Canada and its Provinces, IV, 503-504.

1818, however, the Government was forced, by a debt of £120,000 owing to the province, to appeal to the Assembly for aid. The war with the United States in America and the war with Napoleon in Europe had caused such a heavy drain on the Military Chest of Great Britain that after 1812 the Governor of Lower Canada was obliged to meet the deficit of about £20,000 annually out of the unappropriated monies of the province. By 1818, the debt contracted in this way had grown to an alarming size. On January 7th of that year, in accordance with instructions from the Colonial Office, the Governor, Sir John Sherbrooke, intimated his intention of laying before the Assembly an estimate of the sums required to defray the ordinary expenses for the year and requested the Assembly to provide for them "in a constitutional manner." (6) What Sherbrooke meant was that the Assembly should merely vote the sums necessary for administration which the Government was unable to pay out of its own revenue. There was no suggestion of transferring any part of the Permanent Revenue to the control of the Legislature or of establishing a completely provincial civil list. The Government "invited not financial co-operation based on mutual concessions, but financial assistance on its own terms." (7)

Unfortunately, the Assembly and the Executive differed fundamentally on the question of the "constitutional manner" of voting supplies. The Assembly maintained that constitutionally they might appropriate funds from any part of the revenue and

(7) Creighton, Can. Hist. Rev., XII (June, 1931), 133.

(6) Christie, II, 293.

vote supplies in detail by chapters or items, after reviewing the whole list and making any changes they thought desirable. The Executive maintained that the Crown revenues were beyond the control of the Assembly and that supplies should be voted in a lump sum to the amount requested by the Governor.

The Assembly based its claim to control the whole of the provincial revenue on five arguments, none of which were constitutionally valid. First of all, it invoked the Colonial Tax Repeal Act, cited above, whose enactments, the Assembly stated, "recognize and consecrate the constitutional maxim, that the colonies having a representation have an unalienable right not to be taxed without the consent of their representatives, and that to the Legislature alone appertains the right of distributing all monies levied in the colonies." (8) This contention was absolutely unfounded since the legislation of 1778 was obviously prospective and not retroactive. Secondly, the Assembly claimed control of the Casual and Territorial Revenues of the Crown, which were clearly beyond their reach, on the basis of a message of Lord Dorchester in 1794 stating that "His Majesty has been most graciously pleased to order [the Casual and Territorial Revenues] to be applied towards defraying the expenses of the province". (9) which could not in reason or justice be considered as a gift to the Legislature of the right of appropriation.

Thirdly, the Assembly argued that it could not vote an amount to pay the deficiency between the Crown revenue and the

(8) Resolutions of Assembly of Lower Canada, 1826, in Kennedy, Statutes, Treaties, and Docs., p.250.

(9) Doughty and McArthur, Const. Docs., 1791-1818, p262, 72.

total expenditure without examining the appropriation of the Crown revenue to determine if the deficiency were actually as represented. This claim was a reasonable one, but there was no constitutional provision for it. The retention of the permanent revenue by the Executive involved what appeared to the Assembly to be an illegal and invidious distinction in the expenses of administration by which the officers necessary to the exercise of the executive power of the administration of justice received a fixed and certain payment, while the officers connected with local establishments were subject to a diminution of their salaries in the event of a deficit in the public revenue. Finally, the Assembly maintained that the Legislature was the best guardian of economy. It declared that "the rapid and much too high increase of the salaries of which the persons in civil employ in this colony have procured payment out of the Military Chest, by order of the English Ministry, without the Commons being informed thereof, demonstrates that any other control than that of the representatives of the people, who bear the burden, is insufficient for restraining the public expenditure within proper limits." (10) Not explaining in what way the people bore the burden of supporting the Military Chest of the British Government.

In 1821, Lord Dalhousie requested the Assembly to vote a civil list for the life of the king. This was the occasion for the Assembly to put forth its third major claim, the right

(10) Instructions to Committee of Supply, Lower Canada, 23 February, 1824, Doughty and Story, Const. Docs., 1819-1828, p.214.

to vote supplies annually, The Governor, in asking for a permanent civil list, held out as an inducement the example of English practice. The Colonial Office, however, refused, until the close of the decade of the 'twenties, to consider its own obligation to hand over to the Assembly the control of those revenues which in Lower Canada were roughly equivalent to the hereditary revenue, in return for whose surrender the parliament of Great Britain had granted a permanent civil list. This was undoubtedly the Assembly's chief objection to a civil list. The Assembly also endeavoured to establish the fact that the dissimilar conditions in Lower Canada and Great Britain made the English example of little practical value. It pointed out that, whereas the civil list in Great Britain formed a relatively unimportant part of the total expenditure, in Lower Canada the expenses of the civil government amounted nearly to the whole of the public expense. The Assembly urged that the need for annual examination of the civil list was diminished in Great Britain by the division of powers, the independence of the judges, and the accountability of public servants, which were firmly secured there, but not in Canada. Finally, the Assembly contended that the revenue of Lower Canada, being dependent on trade and therefore variable and uncertain, made a permanent civil list impracticable.

The claim to the right to vote the supplies item by item was a natural consequence of the refusal to vote a permanent civil list. A lump sum voted annually on the estimates of the Executive would no more achieve the purpose of the Assembly than a permanent appropriation. Furthermore this was the only method

by which the Assembly could scrutinize the salaries of officials and alter them if need be.

Such were the principles, all constitutionally unsound, for whose recognition the Assembly prolonged a bitter struggle, sacrificing, every time their bills were objectionable, the salaries of the obscure civil servants, the contingencies required for the ordinary administration of government, the improvements and public works necessary for the progress of the country. A clear explanation of the Assembly's position was given by Neilson in his evidence before the Select Committee of the British House of Commons in 1828.

The great difficulty, as it seems to me, hitherto, in respect of an arrangement, has been that its rights, or at least what the Assembly conceive to be its rights, were denied. I do not think that the Assembly is so very difficult about coming to an arrangement, but it stands very strictly upon its rights to control the whole of the monies levied within the colony; if that were not denied, I should suppose it would not be a very difficult matter to make an arrangement that would be satisfactory to all parties, but they conceive that the only check they have upon anything that may be injurious to the interests of the colony is the control that they have over the monies levied within the colony; if you deny them that, you deny them all share of control in the government of the country. (11)

Neilson's own stand on the financial question does little credit to his wisdom and good judgment. He admitted himself that he was no lawyer, and his views in this respect bear out his admission, for they were, constitutionally speaking, as untenable as those of the Assembly. "I understand, as an individual," he said, "that the Assembly of the province has a right to appropriate and control the whole of the money that is levied in the province."⁽¹²⁾

(11) Report of the Select Committee of 1828, p.78.

(12) Ibid., p.69.

In these words he denied the undoubted right of the Crown to its own Casual and Territorial revenues, acquired at the time of the Conquest. He denied also the right of the British Government to direct the application of the revenue from the Act of 1774. While agreeing with the Assembly that it ought to have a control over the expenditure, Neilson differed with the House generally on the grounds upon which they ought to have that control. (13) In support of his views, Neilson, like the Assembly, invoked Dorchester's message of 1794, and the Imperial Acts of 1778 and 1791, concurring in the general opinion of the colony that they repealed the Act of 1774 with respect to control over appropriations. Neilson also pointed out that, when Dorchester, in his message of 1794, cited above, promised the repeal of the Act of 1774 as soon as the Legislatures of Upper and Lower Canada had passed laws laying similar or other duties equal to those payable under that Act, the Assembly of Lower Canada hastened to pass the necessary laws which finally appeared on the statute books in 1799. The Imperial Government, however, failed to repeal the Act of 1774, no doubt because the Legislature of Upper Canada did not meet the required conditions. Neilson severely condemned the conduct of the Imperial Government in this matter, and declared that the members of the Assembly were "the unfortunate victims of the quarrel that has ensued in consequence of that." (14) But Neilson, and also Austin Cuvillier, the ablest financier in the Assembly, based their chief argument in support of control of the whole revenue by the Assembly on a broader foundation than a

(13) Ibid..

(14) Ibid., p.70.

provision of an Act of Parliament, namely, "a general inherent power connected with the legislative powers of the province."⁽¹⁵⁾

Neilson's explanation of his position was this:

While there was no legislative body in the colony, it was a power which seems to me to belong to that of the empire, of regulating the whole affairs of all the dependencies of the empire; but the moment there was constituted a representative body, then that body naturally took the whole control of the revenue of the country. (16)

With respect to the manner of voting subsidies, Neilson's attitude is expressed in a resolution which he himself proposed on December 7, 1821. It stated that

it is the undoubted right of this house, in voting aids or supplies, or offering money bills for the consent of the other branches of the legislature, (as well as in all other proceedings under the afore-recited act of the parliament of Great Britain), to adopt such order or mode of proceedings, as it may find to be conformable to its rules, and to propound such matter as in its judgment shall seem fittest, and most conducive to the peace, welfare and good government of this province. (17)

Neilson evidently included in this the right of the Assembly to vote bills of supply by items, for, in his evidence before the Select Committee of 1828, he said:

My opinion upon the subject is this, that the money arising from the 14th of the King was to be applied exclusively to the support of the Civil Government; but that being insufficient for the support of the Civil Government, and Executive Government coming to the Legislature for an addition, then the Assembly had the right of control over all the expenditure, to see that every item of that expenditure was such as would authorize it to make additions to it. (18)

In 1819 and 1821, when the members of the Assembly were asked to register their opinion on the question of the increase of subsidies and the voting of money bills by items, Neilson on both

(15) Evidence of Cuvillier, ibid., p.161.

(16) Evidence of Neilson, ibid., p.70.

(17) Christie, II, 345.

(18) Evidence of Neilson, Report from the Select Committee of 1828, p.69.

occasions supported the proposition opposing an increase and approving a money bill by items. (19)

Once the right of the Assembly to control all the revenue was conceded, Neilson would endorse the grant of a limited civil list for the life of the King to include the Governor or Lieutenant-Governor, the judges, and the Executive Councillors. In 1828, the Report of the Select Committee of the House of Commons recommended the surrender to the Assembly of all the revenues, except the Casual and Territorial Revenues, in return for such a civil list. In reply to the recommendation of the Report, Neilson, on December 6, 1828, introduced resolutions among which was the following:

Resolved That on the permanent settlement before mentioned being effected with the consent of this House, it will be expedient to render the Governor, Lieutenant-Governor, or person administering the Government for the time being, and the Judges and Executive Councillors, independent of the annual Vote of the House, to the extent of their present salaries. (20)

Farther than this Neilson refused to go. When in 1832, after the permanent settlement had been effected, Aylmer asked for a permanent civil list of £5,900, which included the salaries of the Governor, the Provincial Secretary, the Civil Secretary, the Attorney-General, and the Solicitor-General, Neilson voted against it, and moved that the salaries and retiring allowances be charged on the Casual and Territorial Revenue, instead of on the general funds. (21)

(19) Alphabetical list of the members of the Assembly in 1819 and 1821 arranged according to their votes, Neilson Papers (photostat copy).

(20) Doughty and Story, Const. Docs., 1819-1828, p.503.

- (21) M. Bibaud, Histoire du Canada et des Canadiens, sous la domination anglaise (Montreal, 1878), p.81. Also Aylmer to Goderich, Jan 26, 1832, Q.201, p.30, (Smith transcript).

Except for those mentioned in the resolution, Neilson believed that all the executive officers should be dependent for their salaries on an annual vote of the Legislature. In support of his argument before the Select Committee of 1828, he cited the practice in Nova Scotia and in the other colonies. But, as Wilmot Horton pointed out, Neilson omitted, either through ignorance or design, to mention that in Nova Scotia, and in all the other North American Provinces except Upper Canada, the civil list was paid by the British Parliament, and that consequently the same cause for collision did not exist there as existed in Lower Canada. (22) Neilson's argument was much more reasonable when he asserted that the circumstances of the colonies rendered it not extraordinary that they should wish for annual votes.

The governors sent out from this country are far away from home; they have great powers, much greater than the executive has here: they have the whole military power at their disposal; they have the nomination of every body, almost down to the parish officers, during the pleasure; and if anything is wrong, there is no remedy to be expected in the colony, except from the power of the Assembly having a check upon the Governor, or by coming to this country; now coming to this country is rather a difficult matter. When the Government has a veto upon any thing being contributed on the part of the public to support the expenses of coming here to ask for justice, it must be done, as it has been done in this instance, by a kind of miserable subscription; therefore the Assemblies have been extremely jealous of the power over the monies levied within the colonies. (23)

The jealous attitude of the Assembly did indeed find justification in the waste and variation in expenditure under the

(22) Evidence of the Right Hon. R.J.W.Horton, M.P., Report of the Select Committee of 1828, p.315.

(23) Evidence of Neilson, Report of the Select Committee of 1828, p.78.

management of the Executive. There were inflated salaries, pensions, sinecures, and offices held by absentees, for whose abolition the Assembly frequently petitioned with little success. In his evidence before the Committee of 1828, Neilson contended that "the expenses of the Civil Government have always grown with the amount of the revenue, because they have never been controlled by the representatives of the people in the colonies." (24)

In support of his contention he stated that the gross revenue of the province was £150,000 a year, of which the enormous amount of 12 or 15 percent. was taken up in the expenses of collection, leaving only about £90,000 net revenue. The cause was the excessively high salaries of many of the officers appointed by the Crown. For example, the Chief Justice received £1,650 or \$8,250, a Puisne Judge £1,050, or \$5,250, the Sheriff of Montreal £1,800 or \$9,000, the Clerk of the Executive Council £650 or \$3,250, and so on. (25)

In 1868, with money worth a third less, and the resources and population of the country tripled, the corresponding salaries were only \$5000, \$4000, \$3240, \$5860, \$1800. (26)

In 1828 the people of Lower Canada were comparing conditions in their province with those in the United States. Neilson cited the instance of the State of New York, which contained three times the population of Lower Canada and possessed four or five times their resources, and yet paid no more than they for the support of

(24) Ibid., p.75.

(25) Ibid., p.66 and 67.

(26) Chapais, III, 196, note.

their civil government. Furthermore, the salaries were high, not only in comparison with those in Canada in 1868 and in the United States in 1828, but also with reference to the incomes generally enjoyed by persons living in the country. Neilson declared that the men holding salaries under the civil government were higherpaid than the wealthiest proprietors of the land, or the persons engaged in the best pursuits of industry, and that by this means they were becoming the lords of the country. (27) More than this, the expenses of government varied without rhyme or reason. For instance, the budget of the Duke of Richmond in 1819 called for £16,000 more than had been required in the previous year. Further proof of waste and carelessness on the part of the Executive came in 1824 with the defalcation of the Receiver-General, John Caldwell, to the extent of £96,000. This officer was appointed by the Imperial Government, and acted under instructions issued by the Commissioners of his Majesty's Treasury. Since the latter had not required adequate security from Caldwell, and for several years had made no regular audit of his accounts, their negligence had made the defalcations possible. The Imperial Government, however, refused to make good the amount owing to the province after the sale of Caldwell's property, and continued to conduct the department in the same unsatisfactory manner as before. It is small wonder, under these circumstances, that the Assembly demanded the right to scrutinize the items of the budget and to inspect the accounts.

It is difficult from the material at hand to determine definitely Neilson's position at each step in the actual dispute over the financial question. Garneau states that the

(27) Evidence of Neilson, Report of the Select Committee of 1828, p.79.

debates on finances were led by Neilson, Papineau, and Cuvillier, Neilson and Papineau discussing the principle, and Cuvillier presenting the figures and accounts. (28) Apparently, with one or two exceptions in the direction of moderation, Neilson voted with the majority, although, as he stated, he disagreed with them on some points of theory. In 1819, when the Assembly passed, by a vote of 13 to 8, a supply bill providing for items of expenditure for one year, amounting to £16,000 less than requested, Neilson was among those who voted "yea". His attitude toward the supply bill of 1821 seems to indicate that he was not so much concerned with questions of principle as he was anxious to curtail expenses. In the first place, he considered the subsidy which the House proposed to vote for the year to be too high, as it probably was, since it actually exceeded the amount asked for by Dalhousie. Neilson moved in amendment that a committee be appointed to prepare

a Bill of appropriation by Items conformably to the Resolutions of the Committee of the whole House on the Estimate of the Civil Expenditure for the current year, with an instruction to report separately such items as may be found to exceed the Votes of this House in the Session of one thousand eight hundred and nineteen, or were not contained in the said Votes nor in the list of Warrants of one thousand eight hundred and seventeen, with the ground assigned on the part of the Executive Government for any proposed augmentation of the Provincial Expenditure, as heretofore voted by the Assembly. (29)

The amendment was defeated by a vote of 7 to 17. Only Neilson and three others voted against the main motion to pass "An Act to appropriate certain sums of money therein mentioned, to defray

(28) F. X. Garneau, Histoire du Canada (5e ed., Paris, 1913-1920), II, 573.

(29) Journals of Assembly of Lower Canada, Jan. 7, 1822, p.56 (Smith transcript).

the expenses of the Civil Government of Lower Canada for the year 1821. (29)

Secondly, in a letter of November 26, 1822, Neilson stated that he would willingly give en bloc a sum which would pay all the appropriations, real or supposed, for the current year, if the amount were approximately that of the year 1817, and on the understanding that the action did not form a precedent for the future. He believed that so long as the money came out of the pockets of the subject anyway, it would be better that it should be spent than lie in the hands of the Receiver-General. If the bill were accepted, it would not bind them for the future; if not, advantage might be gained from the refusal. (30) This letter cannot be interpreted as an indication of Neilson's willingness to surrender any of his principles, for he declared that he would make the concession only "vu les difficultés des circonstances actuels". (30) It shows, rather, that he was, unlike Papineau, a politician who realized the value of an occasional compromise. The financial difficulties with Upper Canada, which came up in 1822, and the British Government's threat to unite the Canadas, news of which had reached Lower Canada in June, 1822, made the temporary relaxation of the claims of the Assembly a wise policy. It would be best not to antagonize the authorities unnecessarily, or else Lower Canada would be at a disadvantage when she entered her protest against the Union Bill.

The outcome of the financial difficulties of the provinces.

(34) ibid., p.75.

(30) J. Neilson to _____ Nov. 26, 1822, Neilson Papers
Summary in Report of the Public Archives of Canada for 1913, p.132.
(photostat copy).

in 1822 was the Canada Trade Act, which, among other provisions, made permanent certain temporary revenue acts which the Assembly of Lower Canada had allowed to expire. Hence, when the session of 1824 opened, the Assembly was not at all inclined to be accommodating. Neilson shared the general ~~and~~ indignation at the arbitrary renewal of the temporary acts, which he considered to be "very nearly approaching to taxation," (31) and consequently an infringement on the constitutional rights of the colonies. Neilson was not for that reason disposed to risk what they already possessed by adopting an attitude of extreme hostility. Papineau, on the other hand, was in favour of refusing altogether to vote subsidies in 1824. Vallières de St. Réal, supported by Neilson, succeeded in carrying the House by a majority of one with ^{the} argument that the House had voted a subsidy demanded in the same manner in the previous year and that nothing had happened since to justify a refusal at that time. When it came to the question of determining the form of the votes, Neilson was again in opposition to Papineau. The latter, whose speeches in this session were conspicuous for their vehemence and scurrility, proposed to disregard completely the classification of offices (32) adopted by the Governor and to reduce the salary of every official from the Governor downwards by twenty-five percent. Neilson, considering such a procedure

(31) Evidence of Neilson, Report of the Select Committee of 1828, p.129.

(32) In 1823 and thereafter, Dalhousie followed the practice of dividing the estimate into two schedules, one containing the expenses of the civil government and the administration of justice which were covered by the permanent appropriations, and the other containing the expenses of the local establishments for which the assembly was asked to provide.

extremely injudicious, moved a series of resolutions in amendment to Papineau's which reflected the superior judgment and discretion of the former. Neilson's probable motives in taking this stand are explained in a letter written to him by Pierre Bédard at this time. Bédard says:

Vos opinions que j'ai vues par vos discours dans la Gazette et par ceux de M. Vallières m'ont parues très judicieuses, très sages; c'est dommage qu'elles n'aient pas été suivies. Je crois que les votes de la chambre vont probablement avoir l'effet d'ôter à la Chambre toute espérance de parvenir au but où elle avait paru tendre, (word illegible) du droit d'appliquer les deniers publics. Sans les actes de la 14^{me} année le gouvernement serait sans ressource, diront ceux qui sont pour une liste civile perpétuelle, et ils donneront cela comme un exemple de ce qu'on ne peut pas se fier à une pareille chambre. (33)

The majority, however, would not endorse the more moderate policy, and the subsidies were voted as Papineau wished.

In 1825, a new development found Neilson again in agreement with the majority. In that year, when Sir Francis Burton, the Lieutenant-Governor, was administering the Government during Dalhousie's leave, the Assembly made a distinct advance in its struggle for control of the revenue. Not having access to the pertinent dispatches from the Colonial Office, Burton reverted to the old form of sending down the estimates, which merely required the Assembly to make up the difference between the permanent revenue and the expenditure. The Assembly, as usual, reviewed all the items, and made several reductions. A detailed appropriation was fixed by resolution. In the bill of supply, however, a sum, not specified, was voted which, in addition to the permanent revenue, should bring the total appropriation to the amount already determined by the Assembly. Thus, since in the bill itself no mention was made of the specific appropria-

(33) P. Bédard to Neilson, March 14, 1824, Neilson Papers (photostat copy).

tions, the Executive was bound to consult the recorded wish of the Assembly in its application of the revenue. To the Assembly, the bill, when it was passed by the Legislative Council and received the assent of the Lieutenant-Governor, was an implied recognition of their claim to control and appropriate the entire public revenue of the province. The bill was so understood also by Bathurst, who expressed his disapproval in no uncertain terms and declared that he would in future disallow any bill on the same model. (34)

Unfortunately, the damage had already been done. The Assembly adroitly employed the precedent of 1825 to substantiate its condemnation of the budgets of 1826 and 1827. In the latter year, Dalhousie withheld the estimates chargeable on the permanent revenue and submitted only those to be paid by the Assembly. Neilson voted with the majority in their reply to the Governor, in which they declared their willingness to grant a supply in the manner provided in the Act passed in 1825, but asserted that the present estimate did not afford an opportunity of granting such a supply. (35) From this position the Assembly refused to move. Succeeding Governors and Colonial Ministers were compelled to condone a method which Bathurst had outspokenly condemned in dispatches which had been communicated to the Assembly.

Meanwhile, the Colonial Office had decided to act on the recommendation of the Committee of 1828 and surrender the proceeds

(34) Bathurst to Burton, June 4, 1825, in Doughty and Story, Const. Docs., 1819-1828, p.271.

(35) Christie, III, 125.

of the Act of 1774 to the control of the Assembly in return for a permanent civil list. Pending the passage of the necessary enactments by the Imperial Parliament, a temporary concession, intimated in Sir James Kempt's message of November 28, 1828, allowed the Assembly to participate in the expenditure of the permanent revenue remaining after provision had been made for the officers of government and the judges. (36) Neilson drafted the resolutions in reply to this address which were approved by the House on December 6, 1828. Those pertaining to finance indicated that the Assembly had no intention of withdrawing any of its claims. The third resolution declared

That it is the opinion of this Committee, that under no circumstances, and upon no considerations whatsoever, ought this House to abandon or in any way compromise its inherent and constitutional right, as a Branch of the Provincial Parliament, representing His Majesty's Subjects in this colony, to superintend and control the receipt and expenditure of the whole Public Revenue arising within this Province. (37)

The Assembly was willing, nevertheless, after the permanent settlement referred to by Kempt had been made, to vote a permanent civil list including the salaries of the Governor or Lieutenant-Governor, the Judges, and the Executive Councillors. When Kempt in his address of January 29th, 1830, again promised an early settlement of financial questions, Neilson moved a reply

thanking him for his message of the day and assuring him that [they would] take into early consideration his said message, with a view of granting such supplies as may be found necessary, in the confident hope that the inherent rights of his Majesty's subjects in this province to control,

(36) Doughty and Story, Const. Docs., 1819-1828, p.498.

(37) Doughty and Story, Const. Docs., 1819-1828, p.503.

by means of their representatives, the expenditure, and direct the application of all monies paid by them for public uses, be firmly and permanently established. (38)

The estimate for the year was preceded by resolutions, passed on March 19th, 1830, one of which declared that

This house enters upon the consideration of the said estimate, in the hope that the grievances complained of by the inhabitants of this province, in their humble petitions to his Majesty and both houses of the parliament of the United Kingdom, and reported on by a committee of the house of commons, on the 22nd of July, 1828, will be fully redressed, and that his Majesty's government will give their entire effect to the recommendations of the said committee. (39)

Some members of the Assembly, notably Papineau and his veteran supporter, Bourdages, the doyen of the House, opposed the resolutions as too feeble, and were in favour of refusing altogether to vote subsidies. Neilson again advocated moderation. In a speech, which contained sound advice, much needed at the time, he said:

On ne doit pas oublier que l'argent public ne peut pas être approprié sans le consentement du peuple Mais nous avons, depuis deux ans, le contrôle sur tous les revenus, et il serait fâcheux de recourir à des révolutions violentes, et d'abandonner l'exercice d'un droit dont nous ne devons pas nous départir; autrement, nous nous trouverions dans une situation pire que celle où nous nous sommes trouvés précédemment. L'occasion est arrivée où nous devons faire preuve de prudence, et montrer que nous savons user de nos droits. (40)

In the light of these sentiments, Neilson's attitude towards the so-called permanent settlement was a strange one, and can only be explained on the supposition that the concessions of the British Government were not as great as Neilson had antici-

(38) Christie, III, 268-269.

(39) Ibid., p.276.

(40) Bibaud, Histoire du Canada, III, 55.

pated. The long-awaited message was laid before the Assembly on February 23rd, 1831. It declared His Majesty's intention to place at the disposal of the Legislature the revenues raised under acts of the British Parliament, amounting to £38,125, relying on the justice of the Legislature to vote in return a permanent civil list of £19,500, £5,000 of which were already met by a provincial act of 1795. Legislation was at that time before the British Parliament for making the necessary transfer of control, which would go into effect as soon as possible after the proposed civil list had been voted by the Colonial Legislature. In a letter to H. Labouchère, a member of the British House of Commons, Neilson describes his view of this arrangement and predicts the nature of its reception by the Assembly.

The Finance Bill will not be well received here. It says if you do not give fifteen thousand pounds we will take it. It has the fault of the repeal of the American Stamp Act; it in fact gives up what you contended for, and even the Government, and leaves a stain behind. It would be much better to repeal the Canada Revenue Act of 1774 at once. The House of Assembly in that case is pledged, upon the recommendations of the Canada Committee being carried into effect, to do exactly what you require of them, at least for a term of years. Besides if it did not the Colonial Act of 1799 giving nearly that sum permanently secured on all the revenue, would come in force on this repeal according to the agreement at the time. After all the Government is more for our use than for yours; and I believe there is no instance of a people not being willing reasonably to support a Government acting fairly for the benefit of the governed. I do not think that the members of the Assembly who would violate a pledge given and fairly met by the confidence of the other party, would be supported by their constituents. (41)

Neilson's diagnosis of the temper of the House proved a correct one. The resolutions of a special committee, approved

(41) Neilson to H. Labouchère, Nov. 22, 1830, Neilson Papers (Smith transcript).

by the House on March 7th, 1831, declared that

being persuaded that the most material of the recommendations of the Canada Committee have not been carried into effect by his Majesty's government, although more than two years have now elapsed since the date of the report, and that the demands now made do not correspond with the recommendations of that committee on the subject of the differences, nor even with the schedule annexed to a bill introduced in the last session of the imperial parliament, by the colonial minister, and proposed to be appropriated by the colonial legislature, are of opinion that it is inexpedient that any further permanent provision for the expenses of the government be made.(42)

Goderich, the Colonial Secretary, still unwilling to believe that the Assembly would refuse to accede to his reasonable demands, permitted the repeal of the Act of 1774 to pass the British Parliament without waiting for the Assembly to keep their part of the bargain. On December 5, 1831, the Assembly was informed of the repeal of the act. At the same time, they were asked to vote a permanent civil list of £5900 to include the salaries of the Governor, Civil Secretary, Provincial Secretary, Attorney-General, and Solicitor-General. The Assembly refused to comply because they had not pledged themselves to provide for the last four officials. The Assembly did not consider the surrender of the revenues of 1774 to be a concession to which it was obliged to respond by the grant of a permanent civil list, for their Act of 1799 already provided for a permanent revenue in lieu of the duties surrendered. (43) It should be remembered, however, that the provincial act would yield only £11,000⁽⁴⁴⁾, while the British

(42) Christie, III, 329.

(43) "Affaires du pays depuis 1828" (extrait de la Quebec Gazette), p.14.

(44) Evidence of Neilson, Report of the Select Committee of 1828, p.71.

Government had surrendered over £38,000. Thereafter it was obliged to carry on with a depleted income, providing for the Governor and other officials from the permanent revenues of the Crown.

For the British Government, the financial question was not primarily one of pounds and shillings, but rather of political expediency and good government, which demanded that the officers of the province be put beyond the reach of the caprices of the popular branch. The attitude of the Assembly was determined by the rigid adherence to abstract principles, characteristic of French political programs and "the stubbornness natural in politically uneducated colonials." (45) Firm in the conviction that the whole of the revenue was already at their disposal, the Assembly of Lower Canada not only regarded the concession of 1831 as negligible, but considered the very claim of the right to concede as an affront. While Upper Canada in a similar situation voted a permanent civil list without hesitation, and with a readiness which did credit to its wisdom and political capability, the Assembly of the Lower Province demonstrated that it was not amenable to those considerations which must determine the conduct of a body claiming recognition as an integral factor in a system of constitutional government.

Neilson was among the extremists on the question of the civil list. For this, and for his general attitude throughout the struggle, he must bear his share of the criticism which justly falls on the Assembly. On one or two occasions, he did counsel moderation. The excesses of 1834-1837 finally convinced him that he had accepted the wrong view, and that a fairly extensive

(45) Creighton, Can. Hist. Rev., XII (June 1931), 138.

permanent civil list was essential to sound and stable government. As soon as he realized his mistake, he began to advocate the annulment of the imperial Act of 1831 which repealed the Act of 1774, stating as his reason that the Assembly had not provided for the support of government and the administration of justice. (46)

The Assembly obtained nearly all their demands in the financial struggle, but it was an empty victory, since the revenues of the Crown and the resources of the Military Chest enabled the Government to maintain itself adequately and pay the salaries of the principal officers without having resort to provincial funds. Only the public interest suffered when the Assembly stood on its principles and passed bills of supply which the Legislative Council could not accept. Two results issued from the failure of the Assembly to bring the government officials and the administration under its influence. One was the odium bestowed by popular opinion on the Legislative Council for its unwavering support of the Executive and its constant rejection of the supply bills of the Assembly. The other was, that since the Assembly had been disappointed in its hope that control of the revenue would prove an effective lever for obtaining the redress of other grievances, it decided to adopt more direct means of reaching its objective of ascendancy in the government. In connection with this latter phase of colonial politics Neilson played his most prominent and most commendable rôle.

(46) Draft of a letter from Neilson to Lord Ripon, July 1st, 1835, summary in Report of the Public Archives of Canada for 1918, p.532.

CHAPTER V.

NEILSON'S PROGRAM OF REFORM

Unlike his attitude towards the financial question, Neilson's views on other aspects of politics and government were definite, unchanging, and pursued by him with steadfast perseverance. He professed to be "neither a Whig nor a Tory nor a Radical, but if anything rather radically disposed." (1) Neilson is frequently referred to as a "constitutional reformer". He was a "constitutional reformer" in the sense of one who wishes to bring about reform by constitutional means. He never had any intention of reforming the constitution itself. On the contrary, he regarded the instrument of government established in 1791 with a respect amounting almost to veneration. Not that he entertained any illusions as to its perfection - he realized its defects as well as anyone - but he clung to it because he believed it to be the best of all possible constitutions and because he was instinctively reluctant to alter anything established by law and hallowed by usage. "Errors and defects there must be in all constitutions and in all government," he said in one of the debates in the House of Assembly, "but sweeping away those constitutions and governments will not correct them, but give birth to worse errors." (2) Among all these imperfect constitutions,

(1) Neilson to A. Gillespie, Jr., Feb. 27, 1836, Neilson Papers (photostat copy).

(2) Provincial Parliament, Jan. 29, 1833, Quebec Gazette (Smith transcript).

the British form, upon which that of Canada was professedly modelled, impressed Neilson as being superior because it was "the only system of free government which has stood the test of ages." (3) Moreover, the constitution of 1791 appeared to Neilson to be peculiarly well-suited to the needs of society in Lower Canada, for it possessed the means of safeguarding the rights of all nationalities. The French, the dominant race, were protected by their representation in the Assembly without whose consent no changes could be effected. At the same time, the Councils, which were independent of the representative body, would prevent the rights of the other races from being subverted. The constitution then should enable the diverse nationalities to cultivate peace and good understanding with each other "by mutual toleration, and inviolable regard for the established rights of all, and an active co-operation for the common welfare." (4)

Neilson's attitude towards the procedure of obtaining permission from the Governor before introducing money bills, illustrates his conception of the constitution as a whole. In the course of a debate on the question in the Assembly during which M. Bourdages labelled the custom "une formalité vaine, inutile, incommode," Neilson said: "Je suis un de ceux qui ont trouvé cette règle incommode; mais je ne suis pas pour cela disposé à la changer; . . . elle est passée en principe constitutionnel." (5)

(3) From an article signed "Constitutionalist," quoted by Christie, IV, 22, as explanatory of Neilson's views.

(4) Report of the Sub-Committee of the Constitutional Association of Quebec (of which Neilson was chairman), Jan. 5, 1836, Christie, IV, 277.

(5) Bibaud, Histoire du Canada, III, 195.

Neilson's cautiousness, his unwillingness even to remove what he believed to be defects in the constitution, arose to some extent also out of a fear that in advocating and executing changes the colonists would go too far and lose all that they had or cause a reaction such as had followed the revolutions of 1820 and 1830 in Europe. "If the British Ministry are once put in the way of making changes in our Constitution," he said, "they may go on and change so often, without even our consent, that we may have nothing left." (6) Neilson was firmly convinced that the existing constitution was quite adequate for the requirements of the province. "With the Constitution we [have] now got, and with perseverance and prudence we may remedy all evils and abuses. We are the sentinels for the people, and in standing firm and united in our ranks we can overcome for them. In doing so we shall both preserve and improve the Constitution; otherwise [I am] apprehensive that in running after imaginary advantages, we [shall] lose real good." (6) Finally, Neilson believed that all the changes in the established constitution, about which people plagued themselves were so much nonsense. In his opinion the welfare of a people was not determined by constitutions, but by their own wisdom and good management. With the exercise of a little patience and good judgment Lower Canada could be justly governed under the existing constitution. At the same time, under the best constitutions, as in the best regulated families, a great many things can and do go

(6) Debate on Legislative Council, Jan. 16, 1833, Q206, p.586 (Smith trans.).

In spite of this evident strain of conservatism, Neilson was not satisfied with the continuance of the status quo. He was, in fact, a reformer who advocated administrative changes. He wanted a different manner of applying the existing constitution. As one of his friends expressed it, his purpose was "to repair the house, not to overturn it." (8) Thus, content with the theory of government as embodied in the Constitutional Act, Neilson urged reforms of a highly practical nature. His objective, in general was to bring the government more in line with the interests and views of the majority of the inhabitants. In 1831, he wrote the following warning to the British Government:

X It may be fairly inferred that the British Government cannot maintain itself long in the present colonies, unless it can find means of accomodating itself to the particular circumstances of the mass of their inhabitants, governing them according to their interests and views, and thereby becoming de facto as well as de jure their government.

Their government must be as well adapted to their circumstances as that of their immediate neighbors in the United States. It must be a government in the interests of the mass of the inhabitants, and not of any particular class or a few individuals: equal rights to all the inhabitants are essential . . . the government that attempts to violate or withhold that essential condition, in truth is no longer the government: it is suicide. (9)

Neilson's matured program, set forth in the so-called Thirteen Resolutions which he introduced into the Assembly in March, 1831, included six very definite abuses whose reform he

(7) Neilson to W. L. Mackenzie, Nov. 24, 1835, Neilson Papers (photostat copy).

(8) H. Heney to Neilson, March 27, 1835, Report of the Public Archives of Canada for 1918, p. 528.

(9) Draft of the instructions to D. B. Viger on his departure for England in April, 1831, as the representative of the Assembly (in J. Neilson's handwriting), Neilson Papers (photostat copy). Summary in Report of the Public Archives of Canada for 1918, p. 513.

proposed at various times throughout his career. These were: the unsatisfactory composition of the Legislative and Executive Councils; the dependence of the judges and their interference in the political concerns of the province; the want of responsibility and accountability of public officers; the inefficient management of waste lands; the withholding of the revenues of the Jesuit estates from purposes of education; the evils resulting from imperial legislation for the concerns of the colony.

The chief abuse of which Neilson complained was the possession of all the important offices, particularly those of the Legislative and Executive Councils, by the adherents of one group which was antipathetical to the interests of the majority of the people. The origin of this bureaucracy, and of the discord between it and the people of the province, which caused most of the difficulties of the period, is described by Neilson in the following extract.

The body politic of Canada after the conquest was composed of discordant materials. Manners, language, religion, laws and institutions all bore this character. Distrust and misunderstanding were inevitable. The capitulations, the treaty of Cession, the Act of 1774 confirmed all that was Canadian. *Every thing in them was repugnant to what existed in the country. Their administration was necessarily* The men who were to govern were necessarily British. defective and unavoidably occasioned discontents Men succeeded one another, but the maxims, the character, remained unchanged. It was a corporation filling up its own vacancies, having perpetual succession The (Governor?) and it is not surprising, sided with the perpetual succession, applied force which eventually has given strength to the party against which it has been brought into play under a free system of government (10)

There could be no doubt about the entrenchment of the official party in office. In 1824, the Executive Council con-

(10) Extract from the draft of a letter in Neilson's handwriting, unaddressed, 1822, in Report of Public Archives of Canada for 1913, p.127.

sisted of twelve members. Of these, two were absent, seven held nine of the principal public offices of the colony with salaries during pleasure, one received only the salary of councillor (£100 per annum), and two received salaries not levied on the colonists. The Legislative Council at the same time consisted of thirty-three members. Of these, three were absent from the province, nine were incapacitated by illness or infirmity, or attended irregularly; five were Executive Councillors holding seven of the principal public offices, six held other public offices with salaries during pleasure, three received only the salary of Executive Councillors or were not paid out of the colonial funds, seven were seigneurs, merchants and others having no salary paid out of the money raised on the subject in the colony. Contrast the number of office-holders in these two branches of the legislature with the five, out of an Assembly of fifty, who held public offices during pleasure. (11)

Little improvement was made as time went on. According to the evidence given by Neilson before the Select Committee of 1828, ~~and~~ the Executive Council in 1827 consisted of ten members, of whom seven were Legislative Councillors, three were clerks of the Legislative Council, and one was Attorney-General. Only one of them was a native of Lower Canada, the rest coming from different parts of the empire, mostly from

(11) "Financial Difficulties of Lower Canada," extracted from the Quebec Gazette of December, 1824. p.18+19. The nature of the offices held by members of the Assembly is not stated.

other colonies and the former colonies in America. (12) At the same time, there were resident in the colony twenty-seven Legislative Councillors, of whom fourteen received payment out of provincial funds, four out of British funds, and nine received no pay. Only nine of them were "natives" of Lower Canada. (13)

Finally, in 1830, Sir James Kempt reported to the Colonial Office that there were twenty-three members in the Legislative Council, of whom twelve held offices under the Crown; seven were large landed proprietors unconnected with the government, three were merchants unconnected with the government, and one had been absent from the province for several years. Sixteen were Protestants, and seven Roman Catholics. Eight were natives of the provinces, and fifteen natives of the United Kingdom or born in other countries. The Executive Council consisted of nine members, of whom only one was entirely unconnected with the government. Two were natives of the Canadas, and all were Protestant except one Roman Catholic member. (14)

(12) Report of the Select Committee of 1828, p.111. The Executive Council in 1827 consisted of: Jonathan Sewell, Speaker of the Legislative Council, Chief Justice of the province and of the district of Quebec, and President of the Court of Appeals; the Rev.C. J. Stewart, Bishop of Quebec; John Richardson, merchant; James Kerr, Judge, K. B. Quebec, and of the Court of Vice-Admiralty; M.H. Perceval, Collector of the Customs; William Smith, Clerk of the Legislative Council; John Hale, acting Receiver-General; C.E.C.Delery, Assistant Clerk of the Legislative Council; John Stewart, Commissioner of the Jesuits Estates; A. W. Cochran, Governor's Secretary, Law Clerk of the Legislative Council, Clerk of the Prerogative Court, and Auditor of Land Patents; James Stuart, Attorney-General.

(13) Ibid., p. 66-67.

(14) Kempt to Murray, Jan. 3, 1830, Christie, III. 290.

The results of this pernicious practice, whereby the Executive and Legislative Councillors held other offices during pleasure, is set forth in the petition from Quebec in 1827, which was drawn up under the guidance of Neilson.

The majority of its [the Legislative Council's] members consisting of persons whose principal resources for the support of themselves and of their families, are the salaries, emoluments, and fees derived from offices which they hold during pleasure, they are interested in maintaining and increasing the salaries, emoluments and fees of public offices paid by the people, and also in supporting divers abuses favorable to persons holding offices. (15)

The chief objection to the Legislative Council was that it rejected repeatedly many bills considered by the Assembly to be not only useful, but indispensable for the welfare and prosperity of the country. In defence of the Governor's choice of officials, it may be said that at first there were no competent men in the colony to fill the various offices. As the colonists became accustomed to representative government, this difficulty was overcome to some extent, but even as late as 1832, Aylmer complained of the difficulty of finding men who did not hold office, who had the necessary qualifications, and who were willing to undertake the laborious duties of Executive Councillor for the meagre salary of one hundred pounds per annum. (16)

Neilson, however, held a higher opinion than did the Governors of the talents of the men in the popular party. He believed that men of independence and of more intimate connection with the interests of the colony could have been and should be

(15) Christie, III, 158.

(16) Aylmer to Goderich, Dec. 13, 1832, No. 103, Q.203, p.296. (Smith transcript).

selected. Neilson concurred in the general opinion that, as the Legislative Council was then constituted, the Councillors were influenced in their attitude towards political issues, otherwise than by their consideration of what was fitting or unfitting. In supporting this view before the Select Committee of 1828, he cited the instance of the passing of the supply bill of 1825 by the Council with only two dissentients. The next year, under a different Governor, the same bill was rejected unanimously by the Council. In the first case the Governor approved the bill; in the second he disapproved of the bill. "Under those circumstances," said Neilson, "the people of the country have got an opinion that the gentlemen who usually attend there are influenced by the will of the Governor, and it is my opinion." (17)

Not only were the Councillors the creatures of the Governor, but they were out of sympathy with the real interests and wishes of the people. Two of Neilson's Thirteen Resolutions have to do with this condition.

During a long series of years, executive and judiciary offices have been bestowed almost exclusively upon one class of subjects in this province, and especially upon those the least connected by property or otherwise with its permanent inhabitants, or who have shewn themselves the most averse to the rights, liberties and interests of the people.

Holding executive offices essential to the proper and regular administration of the government, and having lost the confidence of the country, several of these persons avail themselves of means afforded by their situations, to prevent constitutional and harmonious co-operation of the government and house of assembly, and to excite ill-feeling and discord between them, while they are remiss (18) in their different situations to forward the public interest.

(17) Report of the Select Committee of 1828, p.68.

(18) Christie, III, 333.

Translated into terms of actual practice, the resolutions referred to the repeated and, in the opinion of the Assembly, unnecessary rejection of bills which the latter deemed essential to the welfare of the province.

Although the Assembly magnified the evils resulting from the composition of the Legislative Council, and refused to recognize that their own inexperience and extravagant pretensions were responsible for some of their difficulties, the Legislative Council did undoubtedly require reform. Two remedies were suggested, one of which Neilson approved, but of the other he consistently disapproved.

The one which, I believe, the majority of the people in Lower Canada have in view, is by the exercise of the prerogative appointing men who are independent of the executive, and in fact who are able to live by their own means. That has appeared to us to be the most consistent with the constitution under which we live. If that were found to be impracticable, the other mode would be to make the Legislative Council elective, by electors of a higher qualification, and fixing a qualification in property for the persons that might sit in the Council. I should conceive that the latter mode would be safe enough for all parties; still it seems to be a deviation from the constitution under which we live. (19)

Neilson believed there was a sufficient body of men in the colony, uniting talent with property, from which the Legislative Council might be chosen without doing injustice to any class. (20)

In his evidence of 1828, Neilson did not express any vehement opposition to an elective Legislative Council, contenting himself with a statement of his preference for reform within the bounds of the existing constitution. Although he had observed that the people in Lower Canada were being driven towards popular government by fear of innovations in their institutions with a rapidity which he could not have believed possible twenty years before, he was convinced that this was not

(19) Evidence of Neilson, Report of the Select Committee of 1828, p.133.

(20) Ibid., p.135.

their disposition and that they were not naturally a democratic people. He scarcely foresaw then that the idea of an elective Council, and even the abolition of the Council, would be taken up seriously by Papineau and the French party.

When this proposal, so foreign to the genius of British governmental institutions, was eventually adopted as a part of the patriote program, no one was more energetic in its denunciation than John Neilson. An article in the Quebec Gazette of 1833, although it cannot with certainty be attributed to Neilson (21) is so typical of the devastating arguments which he launched against the scheme of an elective Council, that it may be quoted as expressing his views.

If the Council be elective and the Governor appointed by the Crown, where will the power and prerogatives of the Crown meet with the powers and privileges of the Assembly and the peculiar interests of the colony? at the Castle of St. Lewis, in conflict with the Governor supported by the officers of his choice, the instructions of the Sovereign, and guards and garrisons. Will the voice of an elective Council add to the influence or power of the Assembly? In only one case could this elective Council affect the power and influence of the Assembly: by dividing that power against itself. The elective Council would either divide the Constitutional privileges of the Assembly, as representing the people, in respect to money bills, and thereby enfeeble it; or it would be a mere mockery, a senseless echo. Truly if this is not the folly of the visionary, there is something worse - the blindness of passion released from the control of reason. (22)

From this extract it will be seen that Neilson wished the Legislative Council to occupy a completely independent position, holding the balance between the Assembly and the Governor, and

(21) See supra, pp.6-7.

(22) Quebec Gazette, Jan. 23, 1833. Enclosed in Aylmer to Goderich, Jan. 30, 1833, Q.206, p.680. (Smith transcript).

giving a certain stability to the existing laws and institutions. The Council should be compelled to agree with neither the Assembly nor the Executive, but when they were at variance, it should come independently to a decision which would incline the balance to one side or the other. "If they were independent men connected with the country," said Neilson, "it would be impossible to resist the declaration of the Council, consisting of respectable and intelligent men, in any dispute between the Governor and the Assembly." (23) Neilson insisted quite as much on the value of the Council as a counterpoise to the Assembly as to the Executive, even going so far as to say that, if the most enlightened and independent men were placed in the Legislative Council, it would acquire equal weight with the Assembly in public opinion.

Such views were clearly incompatible with the British system of Cabinet Government, which Lord Durham described in his Report and which has since come to be known as Responsible Government. The central element of this system is the collective responsibility of the executive officers to the majority of the representative House in a manner so direct and effective that they must resign as a body, or appeal to the electorate, whenever it becomes apparent that they have lost the support of that majority. Although this practice was actually in operation in England at the beginning of the nineteenth century, the principle on which it is based was not generally recognized, even in England, until the decade of the 'thirties. In the unreformed Commons of England,

(23) Evidence of Neilson, Report of the Select Committee of 1828, p.133.

it was relatively easy for a ministry supported by the King to obtain a parliamentary majority; so that, until the passing of the first Reform Bill in 1832, the fact that the ministry was dependent on the Commons for its tenure of office seems to have escaped notice. In the Canadas, the term "responsible government" was used with a variety of meanings. To some it meant the appointment by the Governor of men who enjoyed the confidence of the people and the dismissal of individual officials who were unpopular. To others, an elective Legislative Council and even an elective Governor and Executive Council constituted "responsible government." A common demand was that responsibility should be effected by the provision of a court of impeachment in the country to try public officials. Occasionally responsibility to the people's representatives was demanded, but this only meant a general accountability to the Assembly for the conduct of officials. (24) Very few of the colonists, notably William Warren Baldwin and Robert Baldwin in Upper Canada, advocated Responsible Government in its ultimate connotation. This theory, which is a product of the party system, could not be developed in Lower Canada, for Papineau was not the leader of a political party, but of a race which wished to obtain permanent control of the administration and of course would never tolerate the rotation of parties essential to the working of Responsible Government.

Neilson was too sensitive to his environment and too conservative in his instincts ever to accept a system of government based on direct responsibility of the Executive to the

(24) See Chester W. New, Lord Durham (Oxford, 1929), pp.336-337.

people or to the people's representatives. His attitude towards elective institutions has already been noticed. When the drift towards Responsible Government began after the appearance of Lord Durham's Report, Neilson, perhaps partly in reaction to the excesses of the late 'thirties, upheld the old system of colonial government. For some months after he realized that Responsible Government would be put into effect, the Quebec Gazette gathered into one column all its news from the United States that had anything to do with political private scandal or crimes, and headed it "Responsible Government." (25) His constant disapproval of the new system was, moreover, but another manifestation of his rooted desire to stand by old institutions and usages.

Although the central principle of Responsible Government was not upheld by Neilson, some of its features were advocated by him. One such feature which he advocated was government representation in the Assembly. The following extract from the Quebec Gazette of January 23, 1833 describes the necessity of having members of the Executive in the Assembly.

We are persuaded that, till such time as the Government has in the House men connected with the principal departments of the Administration, and enjoying the public confidence, to prepare and conduct the necessary laws for giving efficacy to the Administration, our public affairs will be little better than a state of anarchy, where intrigue, passion, and individual and partial interest and feeling will prevail, at the expense of the general interest of the country. (26)

The Executive Council in Canada, in Neilson's opinion, should be on the same footing with respect to the Assembly as the Privy

(25) William Smith, "The Reception of the Durham Report in Canada," Canadian Historical Association Report, May, 1928, p.53.

(26) Enclosed in Aylmer to Goderich, Jan.30, 1833, Q.206, p.679, (Smith Transcript).

Council stood with respect to the House of Commons in England. Because it was ^aagainst the law and practise of England, Neilson opposed the action of the Assembly in expelling Dominique Mondelet from the House for accepting the position of honorary member of the Executive Council. (27) Mondelet was actually expelled on the authority of resolutions which Neilson had been endeavouring since 1825 to put on the statute books and which in this instance had been misinterpreted by the Assembly. Neilson's intention was to render vacant the seats of only those members who should accept offices of profit or become accountable for public money, not including therein Executive Councillors. In other words, he made that differentiation between political, and judicial or administrative offices which is essential to the attainment of Responsible Government. The inclusion of officeholders in the Legislature is necessary for the operation of that system, but in practice it is neither necessary nor advisable that minor officials should engage in politics. The French party, instead of making this differentiation between offices, suggested that all officeholders be excluded from the Assembly. Neilson, with a keener eye to the practical working of the government, proposed to retain the relationship of the Assembly to the Executive through the presence of the chief officials in the Assembly, excluding therefrom judges and administrative officers whose efficiency depends on their exclusion from politics. These, however, were the only features of the system Neilson would accept. The formation of ~~the~~ parties, the rotation

(27) Case of Mr. Mondelet, Nov. 23, 1832, Q.203. p.548 (Smith transcript).

in office of men from each party, the resignation of the government upon defeat of any of its measures in the Assembly -none of these attributes of the system of Responsible Government had any place in Neilson's scheme of government.

The term "responsibility", which occurs in Neilson's writings usually meant legal responsibility, that is, liability to impeachment for malversation or other misdemeanors in office. Such a responsibility and a means for punishing a breach of it were parts of Neilson's reform program. Hence among the Thirteen Resolutions is found the following:

There exists no sufficient responsibility on the part of the persons holding these situations [executive offices] nor any adequate accountability among those of them entrusted with public money, the consequence of which has been, the mis-application of large sums of public money, the loss of large sums of public money and of the money of individuals, by defaulters, with whom deposits were made, under legal authority, hitherto without reimbursement or redress having been obtained, notwithstanding the humble representations of your petitioners. (28)

In particular, Neilson had in mind cases like the defalcation of Caldwell, the Receiver-General, whose default the British Government did not make good. A new man had been put in his place but, aside from a few suggestions from the Colonial Office, nothing had actually been done to prevent the recurrence of such a misfortune.

For other officials, that is those not responsible for money, but who were guilty of misconduct, Neilson asked for a tribunal in the province capable of hearing and deciding cases of impeachment brought by the Assembly. As matters then stood such cases had to be taken to England to be determined by the King in Council. (28) In that event, it was difficult for the Assembly to

have its cases presented, for it had no resident agent in England, and the Legislative Council could and did sometimes refuse to vote expenses for a special one.

The charges most frequently brought by the Assembly were those against judges and law officers - Foucher in 1817, Stuart, Fletcher, and Kerr in 1831 - whose simultaneous occupation of numerous offices provided many opportunities for misconduct. Of this abuse complaint was made also in the Thirteen Resolutions of 1831.

Several of the judges in the courts in this province have long been engaged in, and have even taken a public part in the political affairs and differences of the province, at the same time holding offices during pleasure, and situations incompatible with the due discharge of their judicial functions, tending to destroy that confidence in their impartiality, in cases where the executive government is concerned, which is so essential to the peace and well-being of the community. (29)

It was Neilson's contention that judges who held executive offices and took an active part in public business could not avoid a certain bias in their judgements from the bench, and therefore he maintained that no judge, not even the Chief Justice, should be a member of either of the Councils, and especially the Executive Council which acted as a Court of Appeals. (30) The justice of the principle of the complete exclusion of judges from politics, recognized in England and advocated by Neilson and others in the colony, cannot be challenged.

The land-granting system was also among those abuses which most warranted Neilson's criticism. In the Thirteen Resolutions, it was contended that

The management of the waste lands of the crown has been vicious and improvident, and still impedes the settlement

(29) Ibid.

(30) Evidence of Neilson, Report of the Select Committee of 1828, p.134.

of these lands, by delays, expenses and difficulties, opposed to their easy and secure occupation by all persons without distinction, who may be disposed to become actual settlers thereon, and apply themselves to this branch of industry, so preëminently beneficial for the general prosperity of new countries. (31)

The chief defect in the land-granting system was that it permitted large tracts of land to lie waste between the improved lots. Such waste lands were of two kinds; the crown and clergy reserves, and uncultivated grants of land held for speculation. The Constitutional Act provided that an allotment "equal in value to the seventh part" of all ~~all~~ land to be granted in the province should be set aside to provide a revenue for the support of a Protestant clergy. (32) The instructions to Lord Dorchester directed that a similar amount should be reserved to the Crown, also with the object of securing revenue. Actually, neither provided any considerable revenue, but both did impede settlement, the building of roads, and the general improvement of the country. "The country will be ruined altogether," said Neilson, "it cannot be settled, nor can anything be done, till such time as those reserves are done away with, or till those who hold them are compelled to do exactly what every other holder of land in the country is bound by law to do, to sit down upon it, and cultivate it." (33)

(31) Christie, III, 332.

(32) Kennedy, Statutes, Treaties, and Docs., p.201. Actually, due to an error in interpreting the Constitutional Act, one-seventh of the land of each township, rather than an amount "equal to the seventh part" of all land granted, was set aside for this purpose. See the Proclamation issued by Sir Alured Clarke in 1792 (Doughty and McArthur, Const. Docs., 1791-1818, p.61).

(33) Evidence of Neilson, Report of the Select Committee of 1828, pp.284-285.

Evasion of the law, to which Neilson referred, caused the second type of waste land, namely, that owned by speculators who held the land, which was exempt from taxation, until the neighbouring lots were improved and the value of their own lands thereby increased at no cost to themselves. Moreover, influential persons were able to secure thousands and thousands of acres for this purpose through groups of men who, for a small gratuity, agreed to act the part of associates and to transfer the whole of their shares to the "leader." (34) Hence the latter was able to obtain land far in excess of the permitted grant of 1200 acres. The abuse was closely connected with the administration, because only those with political influence could obtain grants in this way and evade the law with impunity. The more glaring abuses of the system were abated after 1812, but not before over a million and a half acres of land, or one-third of the land granted had been allotted in this manner. (34)

To the existence of extensive tracts of waste land Neilson attributed the preference shown by persons emigrating to America for settling in the United States or Upper Canada rather than in Lower Canada. In the latter province, he said, it was impossible to get a contiguous tract in any direction because the land was intersected with clergy and crown reserves and with lots held by absentees or persons of unknown identity. (35) Furthermore, the same cause raised the price of land so high that it could not be

(34) See Camille Bertrand, "Concession des terres du Bas-Canada 1796-1840," Canadian Historical Association Report, May, 1928, p.73.

(35) Evidence of Neilson, Report of the Select Committee of 1828, p.280-281.

paid by the settler of moderate means. In the same proportion the seigneurs, particularly the English seigneurs, raised dues and rents on seigneurial lands far beyond what was authorized by law or usage. They too had not been compelled to observe the laws intended to preserve the advantages and encouragement offered to actual settlers.

Two or three times the Assembly tried to remedy the situation, but each time its bill failed in the Council. The remedy suggested was that the Crown should escheat unoccupied lands within the limits of settlement, and either give them to persons who would actually settle them or else sell them for cash to the highest bidder. Neilson was reluctant to extend this regulation to the clergy reserves, because the Protestant clergy had been provided for by law and he was "always very dubious of interfering with what is established by law." (36) His opinion regarding the expedient of a tax upon waste land, which was already required from the holders of seigneuries, was asked by the Select Committee of 1828. Neilson replied that it would be effectual if it could be enforced, but he was doubtful about its execution by a Council containing powerful men who themselves held extensive unoccupied crown grants. For the reformers this was one more instance of the bureaucracy barring the way to the advancement of the province.

Another abuse of long standing against which Neilson consistently protested was the condition of education in the province. In the Thirteen Resolutions, he states that

(36) Ibid., p.284.

notwithstanding the progress that has been made in the education of the people of this province, under the encouragement afforded by the recent acts of the legislature, the effect of the impediments opposed to its general dissemination by the diversion of the revenues of the Jesuits' estates, originally destined for this purpose, the withholding of promised grants of land for schools in 1801, and the rejection in the legislative council of various bills in favor of education, are still severely felt throughout the province, and materially retard its prosperity. (37)

Until 1829, very little was done in Lower Canada to promote education except the Act of 1801, which provided for a "Royal Institution for the Advancement of Learning," appointed by the Governor. (38) This corporation, which was not erected until October, 1818, was closely allied with the Church of England, its president being the Anglican Bishop and most of its members being Englishmen. Consequently, it was unable to secure appropriations from the Assembly who, as Neilson explained to the Select Committee of 1828, "thought it was attempted to get the whole of the children to school in order to convert them, or pervert them, as they called it." (39) Altogether the province had voted only £30,000 to education, and Neilson testified that the corporation schools had not educated more than 1,200 children a year since their establishment. (40) In 1827 there were 82 schools operating under the Royal Institution, only 18

(37) Christie, III, 332.

(38) See Arthur Buller's report on education in Appendix D of Lord Durham's Report, III, 240-274.

(39) Report of the Select Committee of 1828, p.95.

(40) Ibid., p.120.

of which were Catholic. (41) Under these conditions the state of education was truly deplorable. A Special Committee which investigated the subject in 1824 reported that in many parishes not more than five or six individuals could write, and that, generally, only about one-quarter of the Canadian population could read, and about one-tenth could write, and that very imperfectly. (42)

Various attempts made by the Assembly to divide the corporation into Protestant and Catholic branches or to entrust education to each denomination separately, were rejected by Legislative Council as being contrary to the Act of 1801. These rejections confirmed the Catholics in the suspicion that the corporation was "a kind of proselyting plan." (43) They were further annoyed by the rather unreasonable refusal of the British Government to apply the proceeds from the Jesuit estates to education. Actually, those proceeds were much smaller than the Assembly supposed, only £1700 a year, but the fact that they were withheld added one more to their list of grievances. (44) Neilson's view of the use to be made of the Jesuit estates was this:

I have considered them properly as a pious foundation made at the early settlement of the country for the religious and civil education of the youth of the country of Indian and European descent by those who at the time had a right

(41) Lord Durham's Report, App.D, III, 249.

(42) Rapport du comité spécial de la chambre d'assemblée du Bas-Canada nommée pour s'enquérir de l'état actuel de l'éducation dans la province du Bas-Canada (Quebec, 1824), p.32.

(43) Evidence of Neilson, Report of the Select Committee of 1828, p.285.

(44) See Rapport du comité spécial de la chambre d'assemblée, 1824.

to make it, and that it ought not in any way be parcelled out or diverted in any degree from its original intention. It was a foundation really for the benefit of those of the Roman Catholic Religion, and falling into the hands of a Government not Catholic, honestly and fairly it ought to be disposed of as far as it is practicable, according to the intention of the donors. (45)

At the same time, the Assembly itself was not completely innocent of blame. Neilson declared that the "Canadian party will do everything that is possible to promote education, no matter what party." (46) Until 1829, it was not "possible" for the Assembly to do anything more than pass an Act in 1824, permitting the fabriques (parish vestries) to purchase land, not exceeding £75 in value, to obtain revenues for the establishment of parish schools. The "Fabrique Act" was very ineffective because in most of the parishes its existence was unknown. In 1829 an Act was passed which confided the establishment and sole management of schools in their respective parishes and townships to five trustees, elected by the resident landholders eligible to vote at elections. From this time the appropriations of the Legislature to education increased greatly. In 1829, the whole cost of education to the province was £13,785 16s.3d. In 1831 it was £32,470. (47)

Apparently these belated efforts had some effect. Schools rose rapidly under the Act of 1829, and attendance increased in proportion. In a letter to Viger of August, 1830, Neilson mentioned that he had just completed a two months' tour of the

(45) Draft of a letter from Neilson to Sir Francis Burton, Nov.22, 1826, Neilson Papers (photostat copy).

(46) Evidence of Neilson, Report of the Select Committee of 1828, p.121.

(47) Lord Durham's Report, App.D, III, 251.

province, during which he had travelled more than five hundred leagues and visited nearly two hundred schools. He estimated that there were at least sixty thousand children in schools in the province. (48) However, in the following year, a committee of the Assembly on education reported that the proportion of children attending school in Lower Canada was only one in twelve. (49) Most of the trustees, who had the entire control of the schools, could not write themselves. The masters they appointed were frequently incompetent. The people, convinced that it was the duty of the Legislature to provide the means of education, refused to support the schools, or even to supply their children with books.

Although the Assembly deserves praise for its generous grants to schools, actually the system it established was inefficient and even corrupt. The money it voted was handed over to societies and individuals who were liable to no sufficient responsibility, or regular or strict accountability. The liberality of the Legislature, instead of stimulating the efforts of the members of institutions connected with education, seemed to paralyze them, and lead to apathy and indifference on the part of the people themselves. To avoid these evils, Neilson proposed to the Select Committee of 1828 that a non-sectarian system of education, supported by popular contribution, be established. His plan was "to have schools in every parish; the parishioners to have the power of assessing themselves for the purpose of maintaining those schools, and to appoint persons, a kind of

(48) Neilson to Viger, August 26, 1830, Neilson Papers (photostat copy).

(49) Lord Durham's Report, App.D, III, 253.

trustees, to have the management of schools." (50)

It was difficult, however, to induce the Assembly to relinquish the influence it possessed in the country through its power of continuing or withholding the sole means of education. The system in force in 1831 recommended itself to the Assembly through its vast utility as a political machine, and the members found their patronage of education a convenient means of winning votes. The whole problem was intimately connected with the political situation, for the evils of the existing state of education were in large measure due to the efforts of the Assembly to subject the school system to popular control.

Such were the chief abuses ⁽⁵¹⁾ against which Neilson fought, and the remedies which he proposed for them. One or two grievances which found a minor place on his program are worthy of brief notice. He advocated the reorganization of the administration of justice which, he declared, was inefficient, and unnecessarily expensive. The intermixture of English and French codes of law and rules of procedure in the courts had produced much uncertainty and confusion which were increased by enactments of the Imperial Parliament made without consulting the colonists. ⁽⁵²⁾ The particular bugbear in this case was the Canada Tenures Act which came into force in 1826. The Act provided for the application of English civil law to lands held in free and common socage and for the commutation of land held en seigneurie to free and

(50) Evidence of Neilson, Report of the Select Committee of 1828, p.120.

(51) Omitting the "evils resulting from imperial legislation for the internal concerns of the colony" which were discussed in Chapter II, and financial reforms discussed in Chapter IV.

(52) Christie, III, 332.

common soccage tenure, upon application from the holder of the land and on the payment of a sum in lieu of the feudal dues thus renounced by the Crown. The effect of this change was described by Neilson before the Committee of 1828 in an eloquent plea on behalf of the French for the maintenance of their ancient laws.

Now the laws which regulate a man's property, which regulate the inheritance of his children and all that, are always dear to every people; they must be very bad laws indeed if people do not get attached to those laws under which they have lived for a great length of time, and under which they have enjoyed the security of their property. The moment there was a talk about changing the laws, that moment there was an alarm excited throughout the country it created alarm in so far as it was conceived to be the commencement of a system to change the laws that regulate property and which have regulated property since the first establishment of the colony because the courts of justice had uniformly acted upon the principle that the laws of Canada extended throughout the whole surface of Canada. (53)

Another reform suggested by Neilson and one which merited more attention than he gave it was the introduction of municipal government. Some idea of the urgent necessity for relieving the Assembly of the labor of regulating local affairs is given by the Journals of the Assembly for the session lasting from January 22 to March 26, 1830. During that time no less than 132 petitions, mostly for local public works, were presented, requiring reports from 112 committees of the House. Neilson referred to the inconveniences of this system in his evidence before the Select Committee of 1828.

In Canada we have been plagued with an old French system of government; that is to say a government in which the people have no concern whatsoever, everything must proceed from the city of Quebec and the city of Montreal, and persons must come to the city of Quebec and the city of Montreal to do everything, instead of being able to do for themselves ~~in~~

in their own localities. In the United States they have the English system by which every locality has certain powers of regulating its own concerns, by which means they regulate them cheaper and better; whereas with us a man must make a journey to Quebec, he must go to a great expense, he must bow to this man and bow to that man, and rap at this door and at that door and spend days and weeks to effect a little improvement of a road, or something of that kind, of common convenience to a district, whereas all that is done in the United States without going out of his own small district. (54)

Provision for local government was not advocated strongly enough (55) by Neilson, although it was mentioned in the Thirteen Resolutions.

It must not be concluded from this long list of grievances that Neilson was constantly disgruntled with the government and with conditions. He was, on the contrary, acutely aware of the blessings which the country enjoyed and he was extremely patient in seeking redress of the various grievances which were retarding the progress of the province. Even in 1834, when Neilson's erstwhile colleagues were about to ruin all the hopes for whose realization they had been striving, he did not despair nor did he predict the certain doom of the province. It was quite a different spirit which inspired the following lines.

There is, fortunately, yet subject for rejoicing in Canada. British capital, and the substantial advantages allowed by the mother country to the trade and industry of the province, still give to its property and labor double the value they would have if these advantages were lost or withdrawn; notwithstanding the diminution of that value, occasioned by the interruption of the usual circulation of money for two years, by the measures of the late House of Assembly. The proportion contributed by each individual in Lower Canada to the expenses of government, does not amount to a fourth of the proportion contributed for similar expenses by each individual in the adjoining States, and a tax-gatherer is unknown among us. The population of British America has increased to twelve times what it was seventy years ago, while, in the

(54) Ibid., p.86.

(55) Christie, III, 332.

same period, the old colonies, now the United States, have increased only about six times. (56)

Lord Durham was a noteworthy victim of Neilson's disconcerting habit of bringing his interlocutor back to the facts. In criticizing the Report, Neilson said that there were many abuses in the conduct of the Government, but there was little occasion for "the highly coloured picture which he has given of them." (57) He went on to note some facts which apparently had escaped Durham's observation.

In no country in the world have the mass of mankind been more free in the exercise of their industry, more secure in the enjoyment of its fruits, or have a less portion of it taken away for the uses of Government than in the North American provinces; a tax-gatherer is unknown to us; our doors out of the towns are never locked or bolted at night, and we have no paupers; moral and religious instruction is generally well provided for the people; no man is forced to pay anything for the support of a church to which he does not belong, and almost every one owns the land he cultivates. (58)

Neilson was often compelled to apply this douche of common sense to the fevered imagination of his associates in the province. In 1824 the French Canadians had worked themselves into a fearful depression over the proposal to unite the two provinces. Viger was bemoaning to Neilson the terrible prospect and painting the future in the blackest colours. Why could not the Ministry see the folly of crushing those who had every motive for attachment to the Government? Why were Canadians exceptionally treated among British Colonists? He agreed with Neilson as to the general well-being of the country, but how long would this remain with first principles of

(56) From an article attributed to Neilson and signed "Constitutionalist", Christie, IV, 21.

(57) Quoted by William Smith, "The Reception of the Durham Report in Canada," Canadian Historical Association Report, May, 1928, p.51

(58) Ibid.

government misunderstood and combatted? He deplored the lack of communication between Canadians and the British Government.

Papineau was in low spirits, etc., etc. (59) Neilson chided him gently, reminding him that while Canada had not all her rights, she had made progress and would make more, and that in the meantime her people enjoyed greater freedom than those of many European countries.

Le temps et la patience sont des ouvriers bien puissants en politique. Nous sommes des enfants; le temps avec la patience fera de nous des hommes; et aussi hommes que les autres, si nous conservons notre constitution. Soignons notre éducation et ne nous laissons pas corrompre. On se plaint des obstacles qui saisissent toute notre attention et on ne fait pas attention au chemin qu'on a fait. Regardons le progrès qu'on a fait depuis 1810! Nous vivons maintenant dans un pays libre; plus libre qu'en France, où on a repandu des flots de sang pour la liberté, d'où on a quasiment bouleversé le monde entier par suite des efforts qui ont été fait pour cette liberté. On n'a pas tous nos droits; mais ils viennent; et ceux qui n'ont rien à faire à la politique sont aussi bien dans ce pays que dans les pays les plus libres et les mieux gouvernés. Sous la constitution actuelle, ils n'ont vraiment pas grand chose à craindre pour l'avenir; qu'ils conservent leurs mœurs, le goût du travail, qu'ils s'instruisent, et ils seront en mesure pour tous les événements. (60)

Thus, while Neilson devoted his time and energy unstintingly to the task of securing reforms of a highly practical nature, he evidently gave no encouragement to pessimists and theorists who allowed their imaginations to get the better of them. Although a decided optimist, Neilson had at least one trait in common with Candide: his belief that the essential thing was to use your eyes and let the facts correct your theories.

(59) Viger to Neilson, Sept.25, 1824, summary in Report of the Public Archives of Canada for 1913, p.145.

(60) Neilson to Viger, Sept.19, 1824, Neilson Papers (photostat copy), summarized in Report of the Public Archives of Canada for 1913, p.144.

While this was a highly commendable maxim, it did tend to have the effect of making Neilson's political vision a little short-sighted. He was so preoccupied with the flagrant abuses immediately before his eyes that he failed to perceive that the reforms he advocated could not make the system function satisfactorily. Certain injudicious enactments of the British Parliament convinced him that imperial interference in the internal affairs of the province was pernicious, but could imperial interference be eliminated to the extent that he suggested as long as a Governor, responsible to England, appointed the chief officers and directed legislation? Neilson proposed a Legislative Council of enlightened and independent men which would have equal weight with the Assembly in public opinion, but could such a body, appointed by the Governor without responsible advice, ever supersede in public favour a body of men elected by popular vote? Neilson had great faith in the good sense and good judgement of the people and in their representatives in the Assembly, but could public opinion become a vital force in political life while the Executive enjoyed a maximum of power and a minimum of responsibility? Perhaps Neilson realized that the system he upheld could only be temporary and that his reforms might be the forerunners of more extreme changes; perhaps his nature was too conservative ever to advocate more extreme changes. In any case, he refused to carry his reforms far enough to produce a feasible system of colonial government. This defect in his program does not, of course, detract from the inherent value of his reforms. All were essential to sound administration; all ^{were} prerequisites to

Responsible Government. They were probably the only reforms for which the province was ready at this period. However, whether Neilson wished it or not, he had set his feet on the path towards Responsible Government, and his reforms were stepping-stones towards that goal.

CHAPTER VI

THE ACHIEVEMENT OF NEILSON'S REFORMS

By 1831 despatches from the Colonial Office had either authorized or promised the redress of all the grievances of which Neilson had been complaining. Success was the fruit of thirteen years of activity in the Assembly - persistent criticism, patient attack on this detail and that, careful avoidance of injury to the essential qualities of the constitution itself. Until approximately 1827, except during the union crisis of 1822-1823, the financial issue overshadowed in importance all other topics. In 1827, a general crisis was precipitated in which the abuses described in the preceding chapter were brought to light in a more striking manner than ever before. In that year the financial dispute became so very bitter, and the hope of settlement so remote that on March 7, 1827, after only three sessions, Lord Dalhousie dissolved Parliament. In the course of the ensuing election, the Governor and his administration were more violently denounced by the patriote party than at any time in the previous history of the province. Papineau, of course, set the pace for the party. His success at the polls was complete, but his conduct during the campaign made it impossible for Dalhousie to assent to his election to the speakership of the Assembly. Since the members of that body persisted in their choice of Papineau, the House was forthwith

prorogued.

The furore aroused in the colony by these events, and also by the Governor's revival of the old militia ordinances in lieu of those not renewed by the Assembly, indicated very clearly that affairs had reached an impasse which required the interference of the Imperial Parliament. After the prorogation, the rival parties directed their energies to the preparation of statements of grievances intended for British consumption. In Quebec and Montreal petitions were prepared which significantly reveal the factors determining the course of the popular party. At Quebec, where the influence of John Neilson was pre-eminent, the grievances of French Canada were presented in a most effective manner. Emphasis was laid on the constitutional issue. The petition began, in a manner characteristic of Neilson, with a declaration of the esteem in which the constitution was held by the inhabitants of Lower Canada. It went on to state that the statesmen who devised that constitution had intended to bestow on the colony a mixed government modelled on the constitution of England, but that in practice "the true spirit of that fundamental law" ⁽¹⁾ had been violated. The Legislative Council, the weak point in the Government's defences, was made the centre of attack. Composed as it was of persons dependent on the Executive, there was force in the statement of the petitioners that the Legislative Council "is in effect the executive power, under a different name, and the provincial Legislature is in

(1) Christie, III, 158.

truth reduced to two branches, a Governor and an Assembly; leaving the province without the benefit of the intermediate branch as intended by the aforesaid Act. (1) On the Legislative Council was placed responsibility for the rejection of bills "for the remedy of abuses, for encouraging education, promoting the general convenience of the subject, the improvement of the country, for increasing the security of persons and property, and furthering the common welfare and prosperity of the province." The petitioners enumerated a long list of specific bills which had been repeatedly refused by the Council. The administration of the public finances was criticized on the ground of negligence in protecting the Treasury and of extravagance in the expenditure. The system of granting crown lands by which large tracts were held without improvement, was represented as an effective obstruction to the progress of the province. The petition represented that the monies voted in aid of "the diffusion of useful knowledge and the free exercise of individual industry and enterprises," which had been applied under the direction of the provincial executive had not produced the beneficial results that were to be expected. The chief abuse of which the petitioners complained was the false representations and repeated attempts by divers officers of the Executive to alter the constitution, especially at a time when the Assembly was prevented from having an authorized agent in England. Under these circumstances the provisions of the Canada Trade and Tenures Acts became subversive of the rights and dearest interests

(1) Christie, III, 158.

of the inhabitants of the province. Not a word was said about Dalhousie or the recent events in the Assembly.

In marked contrast was the petition from Montreal, the centre of Papineau's activity, which assumed the form of a bill of indictment against the Governor, and asked for his recall. It was at once less complete and more aggressive than the Quebec petition. Both petitions were entrusted to Neilson, Viger, and Austin Cuvillier, who left for London in January, 1828.

The representations of the delegates from Lower Canada on this occasion were destined to receive more attentive consideration than heretofore. William Huskisson, a man of more liberal views than Lord Bathurst, had just taken over the office of Secretary of War and the Colonies. He asked for the appointment of a special committee of the British House of Commons to make a thorough investigation of the government of Canada. In the course of its inquiries, the Committee received the evidence of James Stephen and Wilmot Horton of the Colonial Office; of Edward Ellice, an English seigneur with extensive commercial interests in Lower Canada; of Samuel Gale, the agent of the English inhabitants; and of the three agents of the French-Canadians.

Of those who were examined, John Neilson gave the most evidence. He was called before the Committee six times - twice as often as any of the other witnesses. This may be considered a tribute to the justice and wisdom of his opinions, the clarity of his exposition, and his wide knowledge of men and affairs in his province. His arguments were convincing and supported by facts and figures. His evidence followed closely the petition

of the district of Quebec, but he was always careful to distinguish between his personal views and the views of those whom he represented. More than that, he did everything in his power to place the Assembly and the French-Canadians in a favorable light. He minimized the racial and religious differences in the province as much as possible.

Although Neilson gave evidence on every sort of question, his field was more particularly the legislative aspect, while Viger dealt with judicial and Cuvillier with financial questions. The interference of judges in politics, the unsatisfactory composition and lack of independence of the Legislative Council, the monopoly of offices and salaries held by a small group of privileged men, the ostracism of the Canadians in the allotment of the chief official duties, the systematic expenditure of the public revenue without the authorization of the representatives of the people, all were established in an irrefutable manner by Neilson.

The report of the Committee, submitted on July 22, 1828, justified in a striking manner the claims of Neilson and his associates. Yet it was, nevertheless, quite impartial. Many of the requests of the English-speaking Eastern Townships of Lower Canada were approved. Thus the Report recommended that Circuit Courts be set up there, that a registration of deeds relating to soccage lands should be established, that the representative system should be founded on the compound basis of territory and population. The repeal of the Tenures Act, for which the French petitioned, was not recommended, but rather the Committee suggested that it be brought into effective operation. On the other hand, the Committee

did recommend the levy of a small annual tax on lands remaining unimproved and unoccupied, and the guarantee to the French of the peaceful enjoyment of their accustomed laws of tenure.

Turning to the petitions from the seigneuries, to which they gave the most favorable consideration, the Committee first made the recommendations with respect to finances, which were noticed in Chapter IV. It appeared desirable to the Committee that the proceeds from the Jesuit estates should be applied to the purposes of general education. With regard to the Legislative Council, the Committee recommended

that a more independent character should be given to these bodies; that the majority of their members should not consist of persons holding offices at the pleasure of the Crown; and that any other measures that may tend to connect more intimately this branch of the Constitution with the interest of the Colonies, would be attended with the greatest advantage. With respect to the Judges, with the exception only of the Chief Justice, whose presence, on particular occasions, might be necessary, your Committee entertain no doubt that they had better not be involved in the political business of the House.(2)

For similar reasons it was desirable that judges should not hold seats on the Executive Council. In short, the Committee believed that most of the dissatisfaction in Lower Canada was due, not to the constitution, but to the manner in which the existing system was administered. These recommendations coincided perfectly with the demands of Neilson and the petitioners. Like their demands, however, the recommendations merely grazed the surface of difficulties in the province, and did not reach the fundamental cause of dissension, which was the lack of power of the popular house.

The Report of 1828 was not debated in the British House, but Murray in the Colonial Office seemed disposed to give the

(2) Report of the Select Committee of 1828, p.5.

policy of "an impartial, conciliatory and constitutional system of government" a thorough test. The appointment of Sir James Kempt as administrator, in succession to Lord Dalhousie, augured well for the success of the reformers. The recommendations of the Committee were embodied in definite instructions to Kempt, part of which were communicated to the Assembly in an address of November 28, 1828. (3)

The resolutions in response to this message were presented by Neilson. The following is an interesting bit of irony written by a Tory who was present when Neilson introduced his resolutions.

This gentleman, knowing from long and successful experience the mute and passive disposition of his fellow-representatives, drew his resolutions from his pocket, and with a confidence worthy of his knowledge, silently presented them to the house. Wrapping himself carelessly up in the mantle of what Mr. Stuart happily denominated a "predetermined majority," he condescended merely to solicit the concurrence of the house as a matter of course! (4)

The resolutions expressed satisfaction at the willingness of His Majesty's Government to accede to the desire of the Assembly for an agent in England, and at the measures which were proposed for removing the inconveniences arising from unoccupied lands. They also called attention to certain factors not mentioned by Kempt which were considered essential to the future peace, welfare and good government of the province, such as: the independence of the judges; the responsibility and accountability of public officers;^a Legislative Council more intimately connected with the interests of the colony and less dependent on public revenues; the application of the late property of the Jesuits to the purposes of education; the

(3) Doughty and Story, Const. Docs., 1819-1828, p.498.

(4) Pro Patria, The Lower Canadian Watchman (Kingston, 1829), p.112.

removal of all obstructions to the settlement of the country, particularly unoccupied crown and clergy reserves. Most important, the resolutions reiterated in no uncertain terms the right of the colonists to control their internal affairs without undue interference from the Imperial Parliament.

Resolved, That it is the opinion of this Committee, that no interference of the British Legislature with the established Constitution and Laws of this Province, excepting on such points as from the relation between the Mother Country and the Canadas, can only be disposed of by the paramount authority of the British Parliament, can in any way tend to the final adjustment of any difficulties or misunderstandings which may exist in this Province, but rather to aggravate and perpetuate them. (5)

The Colonial Office had as yet taken no definite steps, and the hopes of the patriotes were considerably diminished by the resignation of Sir James Kempt. On the 29th of September, 1830, a meeting of the citizens of Quebec was held under the chairmanship of John Neilson, at which resolutions were adopted expressing the regret of the inhabitants at his departure at a time when his successful management of public affairs was affording grounds for hope that the remaining causes of discontent would soon be removed. (6)

The situation in the province after Kempt's departure caused Neilson considerable anxiety. In a letter to H. Labouchère of England, dated November 22, 1830, he wrote:

The change of Governor, the reason for which has not been understood, the delays in giving entire effect to the recommendations of the Canada Committee, had already spread suspicion among the people, and our Assembly is really a part of the people, partaking of all their interests and feelings. I sadly fear our old difficulties will be renewed

(5) Doughty and Story, Const. Docs., 1819-1829, p.503.

(6) Quebec Gazette, Sept.30, 1830 (Smith transcript).

at the next Session, and I am much more apprehensive of the consequences now, than I ever was during the Administration of Lord Dalhousie. Confidence in the Home Government was then hardly shaken. The quarrel will now be in some sense, with the British Government against a British Act of Parliament, on finding that the Canada Committee adhered to the Tenures Act for the repeal of which the House of Assembly petitioned as being an Act of Legislation in England for our internal concerns. (7)

Because of these apprehensions, Neilson, in the session of 1831, deliberately took up a definite stand on all controversial questions, a stand from which he did not waver during all the crises which followed. His matured opinion was expressed in the Thirteen Resolutions which were debated in the Assembly in March, adopted, and embodied in an address to the King. They contained a new presentation of the abuses, already expounded in the petitions of 1828, relating to the obstacles which were preventing the progress of education, to the vicious management of waste lands, to the power exercised by the Imperial Parliament in the regulation of trade, to the want of municipal organization, to the confusion resulting from the intermixture of the different codes of law, to the question of land tenure, to the participation of judges in politics as a result of their legislative and executive functions, to the exclusivism in the bestowal of offices and to the preclusion from them of one class of the population, to the lack of accountability and responsibility in the handling of the public revenue, to the defective composition of the Legislative Council. The address contained the following passage, characteristic of Neilson's subtle way of expressing gratitude for blessings while at the same time he was complaining

(7) Neilson Papers (Smith transcript).

of abuses.

While the people of this province suffer under the present state of things, and endeavour to obtain redress, they are not the less sensible of the advantages which they enjoy under your Majesty's government, and particularly of the more liberal policy adopted towards this colony within the last two years; they nevertheless feel with sentiments of the deepest regret, that the hopes with which they were cheered, after a long period of unmerited suffering and insult, have been greatly diminished by the delays which have occurred in redressing many of the grievances complained of in their humble petition to the king and parliament in 1828, most of which were recommended to be removed by the select committee of the honorable the house of commons on the state of Canada, which reported in the same year. (8)

It happened that just before the Assembly adopted Neilson's resolutions there was a change in the ministry in England. The long Tory régime of nearly forty years came to an end with the accession to power of Lord Grey. The Colonial Office was taken over by Lord Goderich who resolved to remove the difficulties in Canada by instituting a series of reforms and concessions. His reply to the address based on Neilson's resolutions bore out these intentions. This long and memorable document was dated July 7, 1831. (9)

The minister began by saying that "the exposition which is to be there found of the views of that body, justifies the satisfactory inference that there remains scarcely any question upon which the wishes of that branch of the Legislature are at variance with the policy which His Majesty has been advised to pursue." Indeed, on many subjects, the Imperial Government had already anticipated the wishes of the Assembly. On others

(8) Christie, III, 333.

(9) Goderich to Aylmer, No.51, G.22, p.537, Report of the Public Archives of Canada for 1931, pp.217-225.

immediate redress was promised. On the questions of application of the proceeds from Jesuit estates, education, waste lands of the crown, municipal institutions, land tenure, the presence of judges in the Councils, the exclusion of the French from governmental offices, in short, on all the questions in dispute, the minister concurred in the views of the Assembly, or indicated satisfactory alternatives.

In a separate letter of November 21, 1831, (10) Goderich dealt with the question of land-granting and clergy reserves. With regard to the latter he concurred with the Assembly in thinking that they formed a great obstacle to the improvement and settlement of the province; he recommended that they be reverted into the general mass of the Crown Estate, and prepared a bill to that effect, upon which, however, no action was taken at this time. With regard to the granting of land, he did not agree with the Assembly as to the desirability of free grants, and showed that the policy of selling the land was a superior method of disposing of it.

These were no vain words and empty promises. A despatch of February 8th, 1831, (11) had already declared that, upon permanent provision being made for their salaries, no judges except the Chief Justice should be appointed to either the Legislative or Executive Councils, and that in future judges would hold their positions during good behavior and not during pleasure. To those who were already members of either Council,

(10) Goderich to Aylmer, No.69, G.23, p.202, ibid., pp.239-245.

(11) Goderich to Aylmer, No.22, G.22, p.197, ibid., p.208.

it was to be suggested that they resign voluntarily. Judges Kerr, Bowen and Taschereau henceforth refrained from attending the meetings of the Councils.

In 1832, the Assembly passed a bill, which received the consent of the Council, disqualifying judges from sitting in the Executive and Legislative Councils. Papineau tried to have the Chief Justice included in this enactment, but Neilson maintained that it would be more diplomatic to conform to the recommendation of the Committee of 1828. The same measure, however, provided that the salaries and retiring pensions should be paid from the casual and territorial revenue, the revenue appropriated by acts of the provincial Parliament for defraying the charges of the administration of justice and the support of the civil government, and out of any other public revenue of the province. This condition involved the admission of the right of the provincial Parliament to appropriate the entire public revenue, and at the same time, since this right was not legitimate, denied a permanent provision for the judiciary. The bill also provided for the constitution of the Legislative Council as a tribunal of impeachment, clearly a case of "tacking." The British Government could not, of course, accept the measure, but their willingness to do everything possible to conciliate the Assembly is shown by the fact that they acceded to the request of the Assembly for the dismissal of Attorney-General James Stuart and Judge Kerr of the Court of the Vice-Admiralty and the King's Bench.

The unsatisfactory composition of the judicial bench was further remedied. In the evidence taken by the Select Committee

of 1828, it had been established that only three of the judges knew the French language, while eight were English. According to population, the proportion should have been reversed. But, since the Report of 1828 was submitted, out of five new judges, four French-Canadians - MM. Vallières de Saint-Réal, Jean-Roch Rolland, Philippe Panet, Elzéar Bédard - had been appointed.

A similar change could be observed in the appointments of Legislative Councillors. Since the Report of 1828, twenty-one new Councillors had been appointed. Of these thirteen were French-Canadians, citizens distinguished by their social position, their talents, their public services. Four of them had seats in the Assembly in the ranks of the popular party. (12)

More important still, there was a marked improvement in the attitude of the Legislative Council. Neilson said in the House in 1834:

J'ai fait moi-même des plaintes contre notre Conseil législatif. En regardant la liste des bills dans lesquels il n'avait jamais voulu concourir jusque-là, je vois que la presque totalité de ces bills y a passé depuis. Il n'est donc pas vrai de dire que toutes les lois nécessaires au bien du pays sont sûres d'y être rejetées. Elles ne l'ont été que trop souvent mais ce n'est plus le cas. Le Conseil a concouru dans divers bills importants pour l'appropriation de certaines sommes d'argent, pour les corporations, pour les procès par jurés, pour la milice, pour les subdivisions des comtés. Cette dernière mesure a donné une représentation vraie et juste de la province. Le Conseil a lui-même passé un bill pour rendre les juges indépendants, et c'est nous-mêmes qui l'avons refusé. Il a encore concouru dans plusieurs autres mesures utiles; tel est le bill pour l'éducation, celui pour les commissaires des chemins dans

(12) The Legislative Councillors appointed between 1828 and 1834 were: Samuel Hatt, Denis-Benjamin Viger, Jacques Saveuse de Beaujeu, Louis Guy, George Moffatt, Roch-Charles de Saint-Ours, Peter McGill, John Molson, Marc-Pascal de Sales Laterrière, F.-X. Malhiot, Jean Dessaulles, Barthélemy Joliette, Pierre de Rocheblave, Robert Harwood, Antoine-Gaspard Couillard, Jean-Baptiste Juchereau Duchesnay, Horatio Gates, Robert Jones, James Baxter, François Quirouet, Joseph Masson. (J. Desjardins, Guide parlementaire historique de la province de Québec, pp.58-59 as quoted by Chapais, IV, 111).

les campagnes, celui pour les subdivisions de paroisses et un autre acte qui rappelle en partie l'acte des tenures.(13)

The reorganization of the Executive Council had likewise been begun. From the presentation of the Report of 1828 to March 5, 1834, the following members had resigned or had been retired: Chief Justice Sewell, Judge Kerr, Receiver-General Hale. During the same period, L.-J. Papineau, John Neilson, Philippe Panet, Dominique Mondelet, and Hugues Heney, five members of the Assembly, belonging to the popular party, and four of them French-Canadians, had been appointed,

Unfortunately, Papineau and Neilson saw fit to decline their appointments, and for this action they have been censured. Aylmer had opened the doors of the government to the two chiefs of the popular party. Had his offer been accepted, events might have taken an entirely different course. The contact between the administrator and his new councillors would probably have softened asperities, smoothed out many misunderstandings, prevented many conflicts. Mutual concessions would have facilitated the normal functioning of parliamentary institutions. Gradually and naturally, the colonists would have arrived, almost imperceptibly, at the practice of responsible government, fifteen years before the triumph of this principle under the ministry of Baldwin and LaFontaine. Perhaps Neilson and Papineau believed that they would be constantly overborne in the Council, perhaps

(13) Quoted by Chapais, IV, 112, from Précis des débats de la Chambre d'Assemblée; état de la province, Quebec, 1834, p.16.

they could see other difficulties in the situation which posterity cannot discern; but it seems likely that their acceptance of Aylmer's offer would have led to many desirable consequences.

Papineau gave as his reason for refusing that the rules of the Assembly would not permit his acceptance. The rule on which Papineau took his stand was one introduced in the form of a bill by Neilson in 1825 and annually thereafter. Its effect, had it passed the Council, would have been to render vacant the seats of members who should accept offices of emolument, but Neilson did not intend this to extend to Executive Councillors, as Papineau interpreted it. Neilson's reason for declining the office must therefore be sought elsewhere. It does not seem likely that he feared the loss of his popularity, for he later deliberately risked it for the sake of a principle. His explanation to Lord Aylmer was that he had given a pledge to his constituents that during the term of the existing parliament, he would not take any step that would change the relations between himself and them. (14) He gave the same reason to the Grand Vicar, J. Demers, one of his most intimate friends.

J'ai toujours déclaré publiquement et à tous les Gouverneurs à qui j'ai eu occasion d'en parler, que tel que j'ai enterai dans la Chambre tel j'en sortirai. J'ai saisi comment je lui ai compris. Celui qui serait capable de tromper le public, serait indigne de le servir, et ne pourrait en effet lui rendre aucun service. (15)

This was not, however, his only reason, nor perhaps his chief one. Actually, he was doubtful about the value of his services in that

(14) Draft of a letter from J. Neilson to Lord Aylmer, Feb. 14, 1832, summary in Report of the Public Archives for 1918, p.518.

capacity.

Il me manque cette conviction intime des services que je pourrais rendre au pays, dans le poste où l'on veut me placer; ce qui seule pourrait me justifier de l'accepter. (15)

Neilson was strongly urged to accept the appointment by those who had more confidence in his abilities than he had himself and he was just as strongly condemned by the same men for his refusal to accept. J. Demers pleaded with him to make this additional sacrifice for the happiness of the inhabitants of the province.

La Province entière désire que vous soyez appelé au conseil exécutif. Si vous permettez que le Gouverneur vous propose cette place une seconde fois, notre Ami de Montreal n'aura aucune répugnance à y être appelé lui-même, et je suis persuadé qu'on l'engagera facilement à y entrer vous formerez avant que six mois se soient écoulés la majorité du Conseil; c'est alors que l'on pourra facilement réussir à faire disparaître les abus, et que l'on pourra prendre les moyens nécessaires et efficaces pour rendre notre pauvre Canada heureux et tranquille. Si au contraire vous vous obstinez à refuser, il nous faudra demeurer encore, au grand nombre d'années, dans le trouble et l'agitation La tranquillité individuelle doit disparaître quand il s'agit du bonheur de tous les habitants d'une province. J'attends de vous, cher M. Neilson, qu'à tous les sacrifices que vous avez déjà faits pour votre pays, vous ne refuserez pas d'en ajouter un nouveau qui est de la plus grande importance dans les circonstances présentes. La paix, le repos, la tranquillité, et le bonheur de vos compatriotes dépendent de vous dans ce moment. (16)

The newspaper, Le Canadien, accused Neilson of inconsistency, in the following extract from an article of April 11, 1832.

Depuis longtemps nous dénonçons le personnel du Conseil Exécutif, depuis longtemps nous nous plaignons avec justice que nos gouverneurs s'entourent des notabilités d'une chétive

(15) Neilson to J. Demers, 10 avril, 1832, Neilson Papers, (Smith transcript).

(16) J. Demers to John Neilson, 8 avril 1832, Neilson Papers, (Smith transcript).

minorité, qui a été la cause de tous nos troubles
Eh bien, il paraît qu'on a prêté l'oreille à nos plaintes,
déjà une nomination vraiment populaire nous a fait espérer
une réforme progressive. On veut faire un pas de plus,
on invite aux conseils un homme très élevé dans l'opinion
publique, et cet homme donne un refus qui nous paraît in-
explicable. (17)

As it has been shown, Neilson's reasons for refusing
were purely personal. His attitude towards the expulsion of
Dominique Mondelet (18) proves that he had no objection to the
general principle of permitting members of the Assembly to
become Executive Councillors. Furthermore, he was not troubled
by fear of the disasters which his friends declared would surely
follow his refusal to accept the office. He was convinced that
the government was steadily being brought into line with sound
principles. His objections to the administration were being
gradually removed. An article of the Quebec Gazette of January
20th, 1833 drew attention to the progress that had been made
since 1828 in the composition of the Legislative Council. In
1828, there were twenty-seven members of the Council, of whom
fourteen were placemen. In 1832, there were thirty-one members,
of whom only six were placemen. In 1828, there were only six
French-Canadians; in 1832 there were thirteen. Of twelve bills
particularized in the petition of 1828, as repeatedly rejected
by the Council, every one of them that had been again sent to
the Council had passed that body by 1832, or their object had
been otherwise attained. The same article, expressed complete

(17) Quoted by Chapais, Vol. IV, p.9, n.2.

(18) See supra, p. 105.

satisfaction with the composition of the Legislative Council, which for years had borne the brunt of the attack against existing conditions.

The Council at present certainly contains a number of members as completely independent of the Executive as fortune can make them. In truth the Executive has nothing to give them of which they would accept. Of these six have been taken out of the Assembly since 1831, some of whom voted for the abolition of the Council, after they were notified of their nomination. National and party bias aside, for property, talent, private worth and character, the members of the Council are probably as good men as could be selected in the country. (19)

With the Legislative Council thus competent to counterbalance an over-expansion of power on the part of either of the other branches, with the British Government disposed to concede the full program of his demands of 1831, Neilson was completely confident that the future prosperity and progress of the province and its people were assured. In 1835 he was able to say:

As to the public affairs of Lower Canada, my wishes have always been confined to our enjoying the means of sufficiently obtaining the lead in Government and from the King, to prevent its doing wrong, and to compel it to consult the interests and prosperity of the colonists generally. I think that we have obtained these means. (20)

Unfortunately for Neilson's high expectations, the men with whom he had been associated had in the meantime lost patience with the slow, deliberate policy of the British Government and had far outstripped his comparatively moderate reforms in their anxiety to grasp the ascendant power in the government.

(19) Enclosed in Aylmer to Goderich, Jan. 30, 1833, Q206, p.670 (Smith transcript).

(20) Neilson to W. L. Mackenzie, Nov. 24, 1835, Neilson Papers (photostat copy).

CHAPTER VII

NEILSON'S RELATIONS WITH THE FRENCH PARTY

Neilson's relations with the French party form the most remarkable and the most interesting aspect of his political career. He did not consistently support the French or any other party or group. In his evidence before the Select Committee of 1828, he said: "I have been ten years in the House of Assembly; I have almost as frequently been in the minority as in the majority." (1) It is nevertheless true that Neilson co-operated more frequently with the French party than with any other group. The programs of Neilson and the French, and certainly their aims, did not always coincide, but they were amazingly complementary.

The aims of the French party were nationalist; their purpose in aspiring to ascendancy in the government was to assert the dominance of nationalism. To their own party they played up the racial aspect of every question in order to appeal to the unlettered, win elections, and maintain their esprit de corps. But they had also to cater to another constituency, widely different from the first in political instincts and experience. To enlist the sympathy and support

(1) Report of the Select Committee of 1828, p.79.

of the British public which was supposedly trained in the discernment of constitutional issues, the nationalists assumed the garb of the champions of constitutional government and popular freedom against the arbitrary sway of a selfish and incapable bureaucracy.

When the French party wished to appeal to the British public, they looked to men of British origin to supply their program. Papineau was temperamentally and intellectually disqualified for leadership in a movement for constitutional reform. James Stuart, John Arthur Roebuck, and John Neilson did the serious political thinking for French-Canadian nationalists, and to these men of the Anglo-Saxon race must be attributed the positive and constructive content of the French movement. In the Assembly Neilson and Stuart were supported by a small group of British reformers who, having nothing to gain and everything to lose by identification with the popular party, were yet keen in their advocacy of constitutional reform for its own sake. Their program consisted in the assertion of the Assembly's right to determine what laws should be passed and in what manner the government should be administered. Their numbers were however so small that they could accomplish little without the influence of the French majority behind them. Hence the two groups moved along side by side lending each other mutual support, until the French party became impatient with this slow pursuit and gradual attainment of their objectives.

In the early 'thirties the French began to cast about for a quicker and more direct way of securing control over the administration. The archfiend was the Legislative Council, which

stood directly between them and control of the government. The suggestion of an elective upper house, advocated by Roebuck, and other radicals of England, appealed to the theoretic and logical French mind as the solution to all their problems. The scheme would have assured the selection of men definitely interested in the welfare of the province. Presented as it was, however, the proposed reform was designed to eliminate the upper chamber as a law-making body, and constitute the Assembly the sole legislative power in the province. Here the French partiality for simplicity and concentration of powers asserted itself, in opposition to the tendency of British practice to subdivide and differentiate functions.

On this issue Neilson and the patriote party parted company, but not before they had enjoyed many years of association of an anomalous, but highly beneficial nature. Neilson, unlike the other British reformers, combined the desire for reform of the administration with an unusual solicitude for the interests of the French-Canadians. His early associations, his racial origin, his conservative instincts, all impelled him toward men of the French race, whose chief desire was to perpetuate their ancient institutions. The friendship was invaluable to the French. Neilson, whose susceptibilities were not wounded by those slights to their nationality which piqued the French so cruelly, whose sound judgment was not impaired by racial prejudices and fears, was able to give wise counsel to the patriotes and to moderate to some extent the passions of the more violent among them. An example of the sort of advice which Neilson was accustomed to give the French is found in the following extract from one of his

letters to Papineau wherein he discusses the activities of the anti-unionists in 1822.

Vous faites merveille à Montréal, surtout dans les campagnes. Tout cela est bon; mais il faut soutenir et circuler votre papier anglais. Il est question maintenant de l'opinion des 28 millions d'âmes qui parlent anglais et avec qui nous sommes en liaison; qui peuvent influencer sur le sort et le bonheur du pays. Il faut prêcher (?) les sentiments libéraux tels qu'ils existent chez tous les Bas-Canadiens et tels que ces sentiments existent déjà chez plus de la moitié de ces 28 millions. Les Canadiens sont tous anglais dans le coeur, mais il faut la langue pour le faire entendre, et vous l'avez par la presse (?). Il faut la faire marcher partout. (2)

The contrasting temperaments and mentalities of Neilson and Papineau supplemented each other perfectly. The impetuosity, the exuberance, the swift passions of Papineau were tempered by the prudence, the sang-froid, and the cold logic of Neilson. Papineau was an orator of great force and eloquence; Neilson was a man of few words. Lacking the rhetorical powers which were Papineau's chief asset, perhaps preferring to leave decisions entirely to the judgment of the members, Neilson introduced his resolutions of 1828 and 1831 without comment. The distinctive talents of the two men made possible an effective team work which was admirably demonstrated on many occasions, but never more signally than at the time of their delegation to London in 1822. Speaking of the outcome of this delegation, one writer says:

Le succès augmenta encore leur prestige. Louis-Joseph Papineau, plus jeune que M. Neilson, avait un temperament beaucoup plus ardent. L'un était un tribun, l'autre un philosophe. L'un pouvait être comparé à Mirabeau, l'autre à Franklin. De fait M. Neilson, lors de sa seconde mission en Europe, fut appelé le Franklin canadien. Comme lui, M. Neilson avait des dispositions et des idées de l'auteur de la "Science du bonhomme Richard." (3)

(2) Neilson to Papineau, Nov. 12, 1822, Neilson Papers (photostat copy).

(3) P.-J.-O. Chauveau, François-Xavier Garneau, sa vie et ses oeuvres, p.clxxvi, quoted by Chapais, III, 139.

One of Papineau's letters brings out clearly the difference in the methods of the two men. Neilson preferred peaceful persuasion, while Papineau was ever ready to exploit the passions of the moment. The letter also illustrates Papineau's inclination to emphasize the gloomy aspect of things in contrast with Neilson's more sanguine disposition. Reproaching Neilson for his scruples about making public the evidence taken before the Canada Committee of 1828, Papineau says:

Vous êtes, ce me semble, délicat, et ami de la paix avec excès s'il est possible de l'être trop Les succès de votre mission sont grands et heureux au delà de nos plus vastes espérances, mais ils sont loin d'être complets. Leur exécution est confiée nécessairement aux autorités locales; en grande partie aux hommes immoraux qui sont flétris par le rapport de la Chambre des Communes et dont les intrigues seront incessantes et ourdies avec une activité dont nous avons si longtemps souffert, pour rendre illusoire les promesses et les conseils honnêtes qui les perdent. Des instructions précises parce qu'elles étaient favorables au pays n'ont-elles pas été tronquées même sous les Gouverneurs les plus sur leurs gardes et les mieux disposés? Quant au ton des papiers nouvelles j'incline à croire qu'il faut souffrir avec patience qu'il règne un peu de chaleur pendant quelque temps après qu'elle a été excitée par autant d'injustices et d'insultes comme le pays en a souffert. Un calme absolu ressemblerait à de l'indifférence et autoriserait nos ennemis à dire que notre activité est épuisée et que nous sommes prêts à tout souffrir. (4)

This profitable friendship terminated in 1834, destroyed by a series of conflicts which culminated in the major quarrel on the subject of an elective Legislative Council. The proposal to make the Legislative Council elective was first suggested in the Legislature of Lower Canada in the first session of 1831. After the adoption of Neilson's resolutions in March, Louis Bourdages, Papineau's chief lieutenant, proposed two additional resolutions which condemned not only the composition, but the constitution of

(4) Papineau to Neilson, Sept. 30, 1828, Neilson Papers (photostat copy).

the Legislative Council, declaring it to be "fatal au repos et à la prospérité de cette province." (5) Neilson's intention in proposing the resolutions was, he said, only "de faire déclarer à la chambre la situation malheureuse où se trouvait le pays, en détaillant les maux qu'il souffrait." (6) He deplored the addition of resolutions denouncing the constitution, and tried to convince the house of the advantages derived from that instrument of government.

Nous sommes dans un état de véritable prospérité; nous jouissons de plus de bonheur qu'aucun autre peuple de la terre Ces avantages, nous les devons à notre constitution, l'attaquer, c'est ébranler les fondements de la société, créer un état de confusion dans les temps malheureux surtout Qu'on n'oublie pas que la Grande-Bretagne peut recourir à la force physique Nous sommes heureux et prospérés. . . . (7)

Evidently the violence of Bourdages and his supporters had alarmed Neilson, for, instead of emphasizing abuses as he had done at the beginning of the session, he was now trying to focus attention on the prosperity of the province. The resolutions of Bourdages were carried by a vote of 33 to 29 and 32 to 30. Neilson, however, succeeded in having them omitted from the addresses made to the King and Parliament at this time.

There was in this incident a significant sign, Two divergent currents were beginning to make their appearance in the popular party, one directed by Neilson and the other by Papineau. After extolling, with Papineau and the other leaders of the popular party, the benefits of the constitution of 1791,

. (6) Bibaud, Histoire du Canada, III, 37.

(7) Ibid., p.46.

Neilson and his followers were not disposed to reverse their attitude and attack one of the fundamental provisions of that constitution. The clashes between the two groups became more and more frequent, although there was no definite alignment of parties taking the same collective attitude towards all issues.. Neilson could support the Papineau party in their impeachment of Attorney-General Stuart in the same session in which he opposed that party in their stand with respect to the Legislative Council.

This contentious issue regarding the Council was again raised in the session of 1831-1832. On the 10th of January, Bourdages submitted resolutions of which one object was to make the Legislative Council elective. After a long debate in which Papineau energetically upheld this proposition while Neilson opposed it on the ground that there was no popular demand for it, the latter succeeded in causing the defeat of the Bourdages resolutions by a vote of 37 to 22. (8)

In the same session, a sharp division occurred over the question of the admission of the notables(principal inhabitants) to the meetings of the fabriques(parish vestries). In most of the parishes of Lower Canada the election of marguilliers (churchwardens) and the submitting of accounts was done in a meeting of the old and new marguilliers at which the freeholders were not present. This was a custom in the Catholic Church dating from 1660. However, in one or two parishes the practice had been adopted of admitting a certain number of parishioners

(8) Ibid., p.86.

recognized as notables. (9) In 1830 there was a movement in favor of making this exception the rule. Petitions were sent to the Assembly, and in 1831 Bourdages brought in a bill to admit to meetings of their fabriques all Roman Catholic land-owners in the town of Three Rivers and in ~~the~~ rural districts and all citizens of Quebec and Montreal who owned property of the yearly value of thirty livres. The clergy considered the bill to be an encroachment on the rights of the Church. In December, 1831, the bill came up for its third reading. Chapais describes as follows the effect in the House and the significance of Neilson's attitude towards the question:

Immédiatement deux courants d'opinion se dessinèrent parmi les députés. Les esprits conservateurs, respectueux des traditions et des coutumes, enclins à soutenir les idées de discipline, d'ordre et d'autorité, sans cesser d'être partisans d'une sage liberté et amis de la cause populaire, se sentaient plutôt disposés à penser comme le clergé sur cette question, et à appuyer son attitude. Parmi ces députés, on remarquait au premier rang M. Neilson. . . . tout en appuyant les revendications légitimes du peuple et de ses représentants, il n'avait rien du novateur ni du radical. C'était un homme pondéré, ennemi des aventures et de la licence, et réfractaire aux théories excessives avec lesquelles quelquesuns de nos chefs commençaient à se monter la tête. M. Neilson était en ce moment à l'apogée de sa popularité et de son prestige. (10)

Neilson's influence was not sufficient to bring about a defeat of the Fabriques Bill. Neilson argued that the fabrique was an

(9) For the meaning of the term "notable" see Questions submitted by a special committee of the House of Assembly of Lower Canada to the curates of the diocese of Quebec, relative to the affairs of the Fabriques (Quebec, 1832). Apparently there was no generally accepted definition of the term. Most of the curates declared that it was impossible to distinguish the notables from other citizens. Some would include all the landholders in this class. Others would include only the seigneurs, Captains and other Commissioned Officers of Militia, Justices of the Peace and other Magistrates, and Notaries.

(10) Chapais, III, 250.

institution recognized by law, and that they had no more right to attack it than to attack the banks. He proposed an investigation on the grounds that there was no precedent for an act regulating the administration of any ecclesiastical property other than that of the established church, and that the proposed law was a violation of the Articles of Capitulation, of the Treaty of conquest of 1763, of the Act of 1774, of the existing constitution, and of the customs of the parish vestries recognized by the provincial act of 1824. To no avail; his amendment was defeated by a vote of 21 to 28. (11) The bill was adopted by a vote of 30 to 19, but it was rejected by the Legislative Council. (11) The chief result of the controversy was the alienation from the popular party of the sympathy and moral support of the clergy and of the more moderate and sober of its adherents.

Between the close of the session of February 25, 1832, and the re-opening of Parliament on November 15, 1832, an unfortunate incident took place which greatly inflamed the passions of the opposing factions. This was an election held in April and May for the west ward of Montreal. The candidates were, for the Canadien party, an Irish Catholic, named Daniel Tracey, the editor of the Vindicator who had been imprisoned for libel by the Legislative Council, and for the British party Stanley Bagg, an English Protestant. The election was very hotly contested. On May 21, the twenty-second day of the election, a riot took place between the partisans of the two candidates. The militia were called out; the mob threw stones at them, and the latter

(11) "Affaires du pays depuis 1828", Quebec Gazette, p.39.

fired, killing three Canadiens. The election ended with the declaration of Tracey's majority of four votes, but it was not the end of public excitement. Papineau and the patriote newspapers became greatly agitated. Colonel Macintosh and Captain Temple, who had been in command of the militia forces, were brought before the grand jury on a charge of murder, but the jury refused to prepare a bill of indictment. (12) Aylmer made the mistake of writing to the officers, expressing his satisfaction at the result of the proceedings instituted against them. (13) From that moment the rupture between the Governor and the popular party was complete and irrevocable.

Under such conditions the House was summoned in November, 1832. The proceedings opened with a vote of censure against the Governor for his speech at the last prorogation. Neilson made a plea for greater harmony between the branches of the Legislature, in which he protested rather mildly against the violence of Papineau and Bourdages. Neilson said that the House was not unaccustomed to hear censures passed on it by the Executive, but it seemed to him that this kind of recrimination, which the Assembly gave as well as received, was inconsistent with the dignity both of the executive and the legislative powers. However, while he thought it would better to moderate their resolutions slightly, he said he would not "take the trouble of making any motion on the subject." (14)

The occasion for a stronger reprimand on the part of Neilson presented itself in the case of Robert Christie, the historian, who was the member for Gaspé at this time. Christie

(12) Christie, III, 400.

(31) Ibid., 403.

(14) Debate on Governor's speech at close of preceding session, Nov. 20, 1832, summary from Quebec Gazette, Q. 203, p. 518 (Smith trans.).

had first been elected in 1829, just after the representation of the Assembly had been increased from fifty to eighty-four, giving the Eastern townships eight representatives of their own. Christie was expelled from the House in the session of 1829 on various allegations of misconduct. His principal offence was that of having, as an ultra partizan of the Dalhousie administration, misadvised the Governor, thus procuring the dismissal of certain magistrates from the commission of the peace on account of their political opinions and votes in the Assembly. The justices of the peace affected by Christie's conduct were Neilson, Quirouet, Blanchet, and Bélanger. Christie was re-elected and re-expelled four times thereafter, on the strength of the first expulsion. In the session of 1832, the Governor asked the House to consider the case of Christie, presenting a petition of the latter to Lord Goderich and the Colonial Secretary's reply. Goderich professed his unwillingness to believe that, after the case of Wilkes in England, the House of Assembly would maintain that any person could become ineligible as a member of that body by the mere force of a former vote of expulsion. (15) This called forth a series of resolutions from A. N. Morin, in which he severely blamed the Colonial Minister for interfering with the affairs of the Assembly. Papineau made a violent speech, declaring that in occupying himself with such trivial matters, Lord Goderich showed a meddling disposition inconsistent with a proper system of government.

(15) Goderich to Aylmer, Jan. 26, 1832, Christie, III, 441,ⁿ.

Although Neilson in every session supported the expulsion of Christie, these resolutions were the occasion for an unusually lengthy speech from him in favour of greater consideration and respect for the government. He said in part:

Let us respectfully state that our resolutions with respect to Mr. Christie were well founded, and that we will finally maintain them, but not accuse the King of violating our privileges, when nothing was farther from his intentions. His Majesty's Government in England is part of this, and the Administration here is a part, the Legislative Council is a part, and we are a part, and if we eternally dispute about an ill-expressed or ill-understood word, there would be an end to all government, and we may find to our cost that the Government in England will go their own way without us. At the beginning of each Session we pray that all we did should receive the most favourable interpretation, and undoubtedly we owe it in return to put the most favorable interpretation upon all that comes from His Majesty's Government. (16)

Neilson then proposed resolutions of a more moderate description to replace those of Morin, and Neilson's resolutions were adopted by a vote of 44 to 10. (17)

The next disagreement between Papineau and Neilson took place in the course of a debate on the composition of the Board of Audit on December 3, 1832. Papineau complained that the Canadians had not a fair share of the appointments made in the province. For example, only one Canadian had held a situation in the Custom House. At his death, the Appointment was not given to his son, but to an alien (étranger). Neilson by way of reply pointed out that, while at the time of the Conquest and ~~and~~ for some years afterwards the Canadians were disqualified by their inability to speak English, lately Lord Goderich had been introducing a more liberal policy in this regard, and actually there

(16) Case of Robert Christie - House of Assembly, 28th and 30th of November, 1832, Q.203, p.623. (Smith trans.).

(17) Christie, III, 445, n.

had been a greater number of strangers (étrangers) appointed to situations in other colonies than in Canada. (18) The French party was extremely inconsistent in this matter of appointment. A case in point was the expulsion of Dominique Mondelet, in this session, under the authority of resolutions of the Assembly declaring that members might not accept offices of emolument under the Crown. Mondelet's position was only that of an honorary member of the Executive Council, and his expulsion on the authority of resolutions was unconstitutional. The important fact, however, was that the Assembly had not expelled Philippe Panet, a member of the Assembly and an Executive Councillor, whose appointment to a judgeship had necessitated the naming of another member of the Assembly to represent the government in that House. The difference was that, while Panet was a member of Papineau's party, Mondelet had not proved amenable to the leader's dictation. Neilson was one of those who directed a charge of inconsistency at the French party on this occasion. (19)

On the 10th of January, 1833, Bourdages returned to his attack against the Legislative Council. This time Papineau was successful in rallying the majority to the support of the principle of election, which henceforth headed the program of the popular party. The division on the resolutions, taken on the 15th of January, was a very close one - 34 to 26. It marked a definite breach between the Neilson party and the Papineau party.

(18) Discrimination against Canadians, House of Assembly, Dec. 3, 1832, Q.203, p.649. (Smith trans.).

(19) See article from Quebec Gazette, quoted by Christie, III, 500-501, n.

Ranged on the side of Neilson were Cuvillier, Quesnel, Duval, Gagy, and several other members of the Canadian party, who, while continuing to recognize the justice of the rights claimed by the majority, were afraid to risk by extreme demands the gains they had already obtained.

The debate between Neilson and Papineau was the more bitter because, as Garneau says, "Tous deux avaient l'âme grande et fière. Ils étaient presque des amis d'enfance; ils avaient toujours combattu côte à côte pour la même cause." (20) Furthermore, they had already become involved in a violent personal quarrel in which Papineau referred to Neilson as "a mere leader of the sans-culottes" on the British side, while Neilson accused Papineau of using his position as Speaker to secure immunity from giving satisfaction to the men he had insulted. (21) In Committee of the whole house, Papineau made a speech three hours long during which he vehemently denounced the administration from the Governor down, labelling it vicious and defective. Then Papineau proposed that the vote be taken at once, but Neilson moved for adjournment on the ground that other members should have the same opportunity as Papineau to express their views. Neilson went on to say that he had been bred in the old school where he had learned to do things with deliberation and maturity of judgment. He contended that the several momentous points comprehended in the resolutions could not be decided within the compass of part of an evening, and that constitutions were not changed in one

(20) Histoire, II, 627.

(21) F. Bradshaw, Self-Government in Canada and how it was achieved: The Story of Lord Durham's Report (London, 1903), p. 82.

day, or even two or three. (22) His motion was carried by a vote of 46 to 14.

When the debate on the Legislative Council was resumed, Neilson pointed out the evident inconsistency in proposing changes of this nature in the constitution. He was astonished, he said, at the change of opinion that had taken place. In all their addresses to the King hitherto they had entreated that the constitution be preserved. He recollected when, in 1810, the father of the member for Montmorency (23) was thrown into prison for maintaining the constitution of the country. They had complained of the violation of the constitution by Craig and by Dalhousie, but now the constitution itself seemed the sole object of attack. Neilson could not understand the cause of this change, but he predicted that if they went on in this way they would next come to a change in the constitution of the Assembly itself. It was very true that the Legislative Council had on many occasions obstructed the progress of affairs, but with what effect? When public opinion was expressed, sooner or later they had to give way. (24) Evidently the recent reforms of the Legislative Council had caused a complete change in the attitude of Neilson towards that body.

This session brought out clearly the decidedly American

(22) Debates on Legislative Council, House of Assembly, Jan. 10, 1833, Q.206, p.445 (Smith trans.)

(23) Pierre Bédard, father of Elzéar Bédard.

(24) Neilson in debate on Legislative Council, Jan. 16, 1833, Q.206, p.586. (Smith trans.).

tinge in the program of the French party. Not only the elective institutions proposed, but also the device of calling a convention to prepare a new constitution were borrowed from American practice. It was proposed by Bourdages to petition the Imperial Parliament to pass an act which would permit a convention elected by the people to determine what changes would be required to produce better government in the province. (25) The Papineautistes were of course confident that the verdict would be in favour of an elective council, which the Imperial Parliament would be called upon to grant. Neilson was opposed to appealing to the Imperial Parliament for any change whatever. He declared that the consequence of such action might quite probably be the inauguration of a series of reactionary changes which would leave them none of the advantages they were enjoying. He was confident that with perseverance and prudence they could remedy all evils and abuses under the existing constitution.

In this session, also, Quesnel brought in a new bill for the independence of the judges in place of the one which had been vetoed in London. The new bill removed the objections to the first one by framing a separate act for a court to try impeachments, and using such expressions with respect to the source of the permanent salaries of the judges as would satisfy the ministers of the Crown without violating the alleged rights of the province. Papineau was suspicious of the bills, and declared they must determine whether circumstances had not changed so as to render the bills

(25) "Affaires du pays depuis 1828," Quebec Gazette, p.58.

inadvisable at that time. Neilson again put in a plea for consistency. He observed that it was too often said that the Government could not be trusted, but he asked them not to give anyone occasion to say that they were not to be trusted. They prayed for a particular measure, but when the government was willing to grant it they said, "No, we don't want it, we can't trust you. We would rather live without any government or law, than have anything to do with you, and we can't even place confidence in the head of the Imperial Parliament." Neilson could find no justification for this attitude. Personally, he was satisfied that the changes made did not effect essentially the aims they were pursuing. (26)

Papineau came back with the argument that the bills should be postponed until the politics and situation of affairs both in Canada and Great Britain were in a more settled state. The ferment in the public mind, the reform that was on the eve of taking place in England, and which might extend to the colonies, and occasion a change of system, all these factors tended to show the necessity of waiting. (27) Papineau then launched into a violent diatribe in which he flung accusations wholesale without respect for persons or institutions. Neilson rebuked him in language more severe and outspoken than ever for his mania of passing judgment on everyone without giving them the means of defending themselves. His speech is worthy of generous quotation.

(26) Debate on Judges and Court of Impeachment, Jan. 29, 1833, Q.206, p.848. (Smith trans.).

(27) Ibid.

M. l'orateur nous conseille de rejeter les offres qui nous sont faites par le ministère anglais, conformément aux vœux que nous avons si souvent, si longtemps et si ardemment exprimés. La teneur de ce que M. l'orateur a dit est, que tout est mauvais dans ce pays; que tout le monde y est malhonnête et sans honneur, M. l'orateur excepté. Les juges, le gouverneur, le conseil législatif, les membres même de cette chambre, tombent sous sa fêrule. Il est vrai qu'il avoue que les juges canadiens que nous avons sont d'honnêtes gens; mais il n'y a qu'eux. Il dénonce en gros tout ce que nous avons appris à regarder comme honorable, juste et raisonnable, et qui en dépit de ses dénonciations continue à être regardé comme tel par notre postérité. Il va au point de désirer le renversement de la constitution, et il ne voit pas la folie de s'attendre que le gouvernement d'Angleterre consentira à des changements qui convertiraient ce pays en une république anarchique, rompraient notre liaison avec la métropole, et nous jetteraient dans les bras des Etats-Unis. La folie et la perversité de ces plans extravagants deviendront de jour en jour plus apparents. Nous pouvons laisser la patience du gouvernement britannique, et perdre les avantages qui nous ont tant coûté à acquérir L'honorable orateur se flatte qu'une grande révolution va avoir lieu en Angleterre, et que les conséquences s'en étendront en Canada; j'ai l'honneur de connaître la nation anglaise, de connaître un nombre de ses plus gens de bien, de ses hommes d'état et de ses patriotes, et je connais leur attachement et leur vénération pour les anciennes institutions de leur pays. M. l'orateur peut être assuré que réforme en Angleterre ne signifie pas révolution. (28)

In the opinion of Neilson, as well as of many other thoughtful men, Papineau's increasing violence and recklessness were leading Lower Canada straight to anarchy and revolution. The majority in the Assembly were not so easily alarmed. The measure for the independence of the judges was postponed until the Legislative Council should be made elective.

The session of 1832-1833 devoted considerable time to investigation of the events attending the Montreal election. Neilson abstained from taking any part in the proceedings and his conduct on this occasion was justly considered to be an indication of his marked disapprobation of the course pursued by his

political friends, who strove to cast the whole odium of the occurrences in question upon the civil and military authorities. He looked upon such measures as mischievous interference with what ought to have been left to the proper tribunals of justice.

Aylmer prorogued the Houses on April 3, 1833, without making any comment on the extraordinary proceedings of the session. The task of estimating the results of the recent events was taken up with dignity and impartiality by the Quebec Gazette. The close of the session, it said, had left affairs in the country in a worse state than at any time since the Assembly was called upon to vote subsidies for the support of the government. In less than five years after the report of the Canada Committee, in less than two years after Goderich's letter acquiescing in all the demands of the Assembly, the hopes entertained by the friends of constitutional government and the prosperity of the province had completely vanished. The article then proceeded to give the reasons for their despair at the future of Lower Canada.

Nous n'avons jamais douté un instant de la sincérité du gouvernement anglais, dans les déclarations qui ont causé tant de satisfaction au pays et à ses représentants Nous ne doutons point non plus de la sincérité de l'opinion publique sur la tournure favorable qu'avaient prises les affaires du pays; maintenant, tous les partis s'accordent à dire que notre situation ne présente rien de favorable. Qui a amené ce changement? La cause qui a empêché l'accomplissement d'engagements implicites ou formels faits sincèrement, pourra devenir le sujet d'une enquête, à l'avenir. Pour le présent, nous dirons seulement que, depuis que la chambre s'est départie des pétitions du peuple en 1828, et du rapport du comité du Canada, pour attaquer les anciennes institutions du pays, la constitution établie, et même l'existence d'une autre branche de la législature, tout a reculé, jusqu'à ce que nous soyons arrivés où nous en sommes, savoir: une rupture ouverte entre le gouverneur, le représentant du roi, le conseil législatif, et l'assemblée; la constitution établie et les engagements les plus sacrés méprisés; les bills les plus importants perdus; le gouvernement laissé sans

les moyens pécuniaires qui sont nécessaires à son support, et le feu de la discorde jeté parmi les préjugés les plus inflammables d'un peuple paisible, libre, et heureux. (29)

When the new session of the Assembly opened on January 7, 1834, it was evident that it would be still more stormy than the preceding ones. Louis Bourdages at once moved to take the state of the province into consideration, observing that he had lost all confidence in the administration, and that but for measures to guard against the cholera (30) no business ought to be transacted with the present executive. Neilson averted a crisis by proposing to introduce instead the education bill which had been defeated in the previous session. Neilson's amendment was approved by a vote of 35 to 17. Neilson was not so successful a few days later, when he was forced to withdraw a motion for the nomination of the customary committee of good correspondence with the Legislative Council. The crisis was inevitable; it came on the 17th of February. On that day, while the House was in committee of the whole, Bédard rose and proposed the adoption of the famous Ninety-two Resolutions.

These resolutions embodied in definite form a statement of the political creed of Papineau and his party. Influenced

(29) Ibid., P.170.

(30) The cholera was brought to Lower Canada by immigrants. The available means of fighting the plague were very inadequate, and the situation was not handled with the care and vigour which its seriousness demanded. The failure of the government to insist on a strict quarantine was attributed to a desire to protect the English merchants from financial loss, and responsibility for the ravages of the plague was freely placed on the administration. The situation was aggravated by the fact that Papineau and his friends saw in the encouragement of immigration nothing but a plot to reduce the relative strength of French Canada.

by the revolutionary movements in North America and in France, Papineau determined to make an appeal to the world's sense of right and justice, following the distinguished examples of 1776 and 1789. The Ninety-two Resolutions were the product of the combined efforts of Papineau who infused them with his ideas and aspirations, of A.N.Morin who expressed them in parliamentary form, of Louis Bourdages the doyen of the Assembly, and of Elzear Bedard at whose residence they were prepared and who introduced them into the Assembly. (31)

The resolutions themselves may be divided into two groups - laudation of the French-Canadian people, the House of Assembly, the Constitution of the United States, Daniel O'Connell and Joseph Hume, and condemnation of the Secretary of State for the Colonies, the colonial Governor, the Legislative Council, the judges and officers of the administration. An article in the Quebec Mercury, entitled "Short Notes on Long Resolutions," and attributed by Lord Aylmer to John Neilson, contained a detailed analysis of the resolutions. On Neilson's estimate eleven of the resolutions were true, six mixed with falsehood, sixteen false, seventeen doubtful, twelve ridiculous, seven repetitious, fourteen very abusive, four false and seditious, and five good or indifferent. (32) An article signed "Constitutionalist" which Christie attributes to Neilson described the Ninety-two Resolutions as

a long declamatory address to the passions and prejudices of the people, whom they formally designate and class in these resolutions as of "French origin," in contradistinction to "British or foreign origin." They grossly

(31) Shortt and Doughty, Canada and its Provinces, III, 317.

(32) Enclosed in Aylmer to Stanley (Private), May 1, 1834, Q.216-2, p.272, Report of the Public Archives of Canada for 1900, p.811. See Shortt and Doughty, Canada and its Provinces, III, 317.

insult and falsely accuse individuals, public authorities, and whole bodies of men, in aid of their attempted usurpation of the established Constitution and the rights of their constituents. They tell the people that they have been subjected to 'a long series of injustice and oppression' under the British government, - that allegiance and protection are co-relative obligations, - refer to the example of the United States, - and finally threaten to seek a remedy 'ELSEWHERE', if their demands are not granted by the British Parliament. . . . they add to usurpation and breach of trust, the guilt of falsehood, calumny, disrespect and insult of individuals and lawful authorities, and excitation to rebellion and treason. (33)

The resolutions open with a tribute to the loyalty of French Canada, to its devotion to the Crown and to its services in defence of the colony, all of which could not be contested. But, beginning with the ninth resolution, and continuing till the fortieth, the resolutions launched a vehement tirade against the Legislative Council, which they declared had never been anything but "an impotent screen" between the Governor and the people, and, by enabling the one to maintain a conflict with the other, had served to perpetuate a system of discord and contention; that it had unceasingly acted with avowed hostility to the sentiments of the people as constitutionally expressed by the House of Assembly. (34) The only remedy for the evil, according to the resolutions, was the application of the elective principle to the Legislative Council. In case the British Government should have in mind any change of the constitution not approved by the House of Assembly, the Mother Country was informed that in less than twenty years the population of British America would be as great as that of the United States

(33) Christie, IV, 21, n.

(34) Resolution 21, Kennedy, Treaties, Statutes, and Docs., p.273.

at the time of their revolution. (35) Abuses in the system of land tenure, in the administration of the crown lands, and of the public revenue were detailed. The political expedient of "tacking" was defended, and all the powers, privileges and immunities of the British House of Commons were claimed for the Legislative Assembly. The monopoly of the patronage in the hands of the English-speaking Canadians was declared a grievance. (36) Articles of accusation were levelled at Lord Aylmer, while the Resolutions expressed confidence in O'Connell and Hume. Finally, members of the Council and Assembly, friendly to the cause, were invited to form Committees of Correspondence in Quebec and Montreal for the promotion of the interests of the party.

During a debate of five days' duration, Papineau defended the Resolutions, and Neilson and his followers attacked them. Considering the violence of the Resolutions, Neilson's speech was singularly mild, but he condemned them with sober, irrefutable arguments, which may have had more effect on the House than a harangue after the Papineau model.

Les résolutions de M. Bédard portent atteinte à l'existence du Conseil législatif, corps constitué, comme l'Assemblée par l'acte de 1791; elles mettent en accusation le gouverneur, qui forme une autre partie de la législature; elles portent un refus de subvenir aux dépenses de la province; elles sont injurieuses au ministre des colonies, c'est-à-dire, à la métropole. Je n'ai pas besoin de dire que je ne puis voter pour ces résolutions. En Angleterre et aux Etats-Unis ces pays qu'on a cités, le peuple a opéré des changements, non par goût de réformes, mais parce que l'autorité royale voulait violer la constitution. La différence du peuple de ces pays à nous est bien sensible; ils combattait pour conserver les droits qu'il avait acquis, et (selon ces résolutions) nous ne voulons plus de ceux que nous possédons. Le résultat serait

(35) Resolution 50, ibid., p.280.

(36) Resolution 75, ibid., p.285.

différent. l'histoire est un sûr moniteur; elle nous enseigne que les conséquences sont conformes aux principes. (37).

At the same time Neilson came to the defence of the British Government and its policy in a speech which was, nevertheless, conspicuous for its impartiality.

Si je suis prêt à résister à tout attaque contre cette Chambre, je suis prêt à en faire autant pour le gouverneur. Comment faire le bien commun en attaquant le représentant du roi? N'est-ce pas nous mettre en inimitié avec les autorités sous lesquelles nous siégeons, et déclarer qu'il n'y en a pas d'autre que la nôtre? Je serai le dernier à consentir qu'on s'emporte en injures et en insultes contre celui qui nous communique les ordres de sa Majesté dans cette province. Dire que nous voulons rompre tout communication avec lui, que nous jetons sous la table les dépêches de M. Stanley, sont des idées que comportent les résolutions, qui jamais n'obtiendront mon assentiment. (38)
C'est nous qui avons mis des entraves à la "réforme des abus."

If Neilson spoke little, he as usual made up for this deficiency by action; it was he who proposed amendments to the motion concurring in the Ninety-two Resolutions. These amendments express his attitude with regard to the political issues of the province at the time of his retirement from the Assembly. They were three in number. The first one declared that the state of the province had been fully considered by the House and represented to His Majesty in March, 1831, and that the despatch of the principal Secretary of State for the Colonial Department, dated the 7th of July following, contained a solemn pledge on the part of His Majesty's Government of its ready assent and co-operation in removing the principal grievances. In these circumstances, the resolution continued, it was the duty of the Assembly "to proceed, in the spirit of the said despatch, to co-operate in

(37) Quoted by Garneau, Histoire, II, 632.

(38) Bibaud, Histoire, II, 211.

promoting the peace, welfare and good government of the province, conformably to the act of the British Parliament under which it is constituted." (39) The second resolution declared that a despatch from the Colonial Secretary, Lord Stanley, communicated to the House on January 14, 1834, contained an acknowledgement of the continued disposition of His Majesty's Government to give effect to the recommendations of the Report of the Committee of the House of Commons of the 22nd of July, 1828, and thereby furnished "an additional inducement to this house to proceed earnestly, diligently, and perseveringly, in so far as depends upon it, to secure for its constituents the advantages afforded by the said recommendations, cultivating harmony and good will throughout the province, and promoting the general welfare." (40) The last resolution contained a list of the reforms which had yet to be procured for the safeguarding of the public interest.

It is urgent at the present time, to make legislative provision for the advancement of the improvement of the province and the amelioration of the condition of its inhabitants.

More particularly,

1. For facilitating the occupation, under secure tenures, of all lands, in the vicinity of settlements, remaining in a state of wilderness, without the actual settler being burthened with any arbitrary or unnecessary dues and conditions, and either upon the ancient tenures of the country, or in free and common soccage, as may be the most agreeable to the occupant.
2. For the greater certainty of the laws affecting real property throughout the province; for the independence of judges, and for facilitating the administration of justice, and recourse against the provincial government in the courts of law.
3. For the greater responsibility of high public officers, and the trial, within the province, of impeachments by the assembly.
4. For the settlement of all public accounts, and for a full and fair investigation into all salaries, emoluments of office, fees and expenses exacted under the public

(39) Christie, III, 542.

(40) Ibid.

authority, and a reduction of all unnecessary charges and burthens on the subject. (40)

These resolutions, restrained in their portent and moderate in their form, were not acceptable to the majority of the House who defeated them by a vote of 56 to 24. The names of those who voted with Neilson on this occasion were: Anderson, Baker, Berthelet, Caldwell, Casgrain, Cuvillier, Davis, Duval, Goodhue, Gugsy, Hoyle, Knowlton, Languedoc, LeBoutillier, Lemay, Power, Quesnel, Stuart, Taylor, Wood, Wright, Wurtele, Young, By the same majority the Ninety-two Resolutions were adopted by the Assembly. Bibaud affirms that a considerable number of members of the House had sworn never to vote against Papineau. Hence, no amount of arguing could have any effect on them. The payment of members, a practice which had been adopted on a motion of Neilson, together with the lack of restriction to eligibility for election, had greatly increased the number of systematic voters and inexperienced and immature members. For the latter Papineau was not only the Speaker of the House; he was an infallible oracle. (#1)

On the basis of the votes taken in the House, it has been calculated that out of a population of 512,882 persons, 361,534 supported the Resolutions, while 115,828 opposed them and 35,519 did not register an opinion. (42) In the ensuing elections the Resolutions swept the country; they became the national Gospel, the touchstone of true patriotism. The deputies

(41) Bibaud, Histoire III, 220-221.

(42) See tables of Jacques Viger in Christie, IV, 236-242.

of the minority who had refused to follow Papineau were denounced as traitors. At meetings throughout the country, resolutions like the following, adopted at an assembly held at St. Athanase, were voted:

Que cette assemblée ose désapprouver la conduite parlementaire de MM. Neilson, Duval, Lemay, Quesnel et autres, qui ont rougi de servir la cause de leur pays, et trahi les intérêts de leurs constituants. (43)

Neilson, in his turn, denounced the conduct of the Assembly.

They have attacked the Constitutional Act itself: - They have resolved on the annihilation of one of the Branches of the Legislature, with which they were appointed to act, and by that resolve excited the just apprehensions and resistance of the two other co-ordinate Branches, and thereby raised obstacles to the performance of the trust confided in them, for the furthering the enactment of laws required for the common welfare; - they have rejected or neglected the proposed co-operation of the British Government for the entire removal of the grievances and abuses complained of in the petitions of the people in 1827, and by themselves in 1831; - they have spread discord throughout the Province, and caused blood to be shed at our heretofore peaceable elections; - they have arrested the improvement of the country and the amelioration of its laws, which were rapidly and successfully advancing, by the aid of an united Legislature, from 1828 down to the moment of the attacks on the established Constitution; - and, finally, they have brought the people of the Province into a state of uncertainty and disquiet as to their future fate, and excited a spirit of individual and national animosity before unexampled amongst His Majesty's subjects in Lower Canada, threatening long and dangerous struggles and excesses. (44)

As a result of indictments like this, Neilson, Stuart, Cuvillier, Quesnel, Duval, were not returned to the new Assembly, which was overwhelmingly in favour of Papineau. However, while Papineau retained popular support in this crisis, the severance of his connection with Neilson did much to discredit him with the Governor and the official party in Lower Canada and with the British

(43) Bibaud, III, 244, n.

(44) From article signed "Constitutionalist", attributed by Christie to Neilson, Christie, IV, 20, n.

authorities in England. W. L. Mackenzie brought this fact to Neilson's attention in no uncertain terms. In February, 1834, he wrote to Neilson:

Doubtless these divisions are deeply injurious to the good cause of reform, and the knowledge that you are opposing Mr. Papineau and the Canadian party will continue, as of late, to be productive of the greatest injury to them in the minds of the English ministers, and prevent them obtaining many concessions they would otherwise, I think, have readily obtained I know that your opposition has great weight at home and is doing them great injury and influencing those who influence the minister against them. (45)

For his attitude throughout the whole period from 1831 to 1834, Neilson was accused by adherents of both the Tory and popular groups of flagrant inconsistency. A. W. Cochrane, who had been Lord Dalhousie's civil secretary in Canada wrote of Neilson in January, 1834: "After flinging firebrands, he began, and has since continued, calling out Fire." (46) Papineau, of course, had absolutely no mercy for the "Constitutional" party, and for Neilson in particular, both of whom he wrongly identified with the bureaucracy, the bugbear of the popular party since the formation of the province. On April 9, 1835, Papineau wrote to Hector-Simon Huot in this regard:

Ce parti est donc beaucoup plus faible en nombre et influence parlementaire qu'il n'était alors. Il est plus fort d'audace et d'appui de deux ou trois rénégats politiques déserteurs des principes qu'ils invoquaient alors. Etudiez à fond le témoignage de Mr. Neilson devant le comité de la Chambre des Communes et confondez ce déserteur d'une cause juste en elle-même et d'un peuple qui lui a donné autant d'importance comme il a été en son pouvoir de le faire. Interrogé vivement, il est impossible que Mr. Neilson ne tombe pas dans des contradictions qui le déshonorent. Je m'étends pour en faire ressortir plusieurs qui éclatent entre les maximes raisonnables

(45) W. L. Mackenzie to Neilson, Feb. 7, 1834, Neilson Papers (photostat copy).

(46) A. W. Cochrane Esq. to Earl of Dalhousie, Jan. 16, 1834 (Smith trans.).

qu'il invoquait alors contre l'intervention du parlement britannique dans nos affaires internes et ce qu'il y a d'affreux dans les circulaires qu'il a signées et fait distribuer dans les townships pour demander entre autres choses au parlement britannique leurs sous divisions en nouveaux comtés autres que ceux dont Mr. Neilson avait lui-même proposé la délimitation et aussi pour se plaindre de la restitution des revenus de la quatorzième au contrôle seul légitime et constitutionnel des représentants du pays. N'ajoutons pas une trop haute importance à celle que nous avons ci-devant donnée à Mr. Neilson par une crainte exagérée de son ardeur à nous nuire et de ses moyens de le faire aujourd'hui qu'il est connu. Le héros tombe, et l'homme est démasqué. (47)

It was true that for years Neilson had been Papineau's closest associate, sharing the glory and ignominy so freely showered on that redoubtable chief and his party. His sudden opposition to Papineau appeared inexplicable to many. Actually, however, there was no change in the sentiments which had inspired Neilson's original course. The Governor, Lord Aylmer, recognized that the change was in the patriote party, and not in Neilson. Writing to Goderich on January 31, 1833, he invited attention to an article in the Quebec Gazette on the Legislative Council, and "in a particular manner to the leading articles in that paper as indicative of the altered view of the affairs of the province taken by Mr. Neilson." Then Aylmer corrected himself: "or perhaps it may be said more correctly that he does not go along with Mr. Papineau and his party, but has taken his stand upon the principles of the Constitution. It is evident that Mr. Papineau and his party have taken up new ground; their avowed object is now to alter the whole frame of the Constitution and Government of the Colony." Papineau even showed unmistakable signs of a

(47) Bulletin des recherches historiques, mai, 1932, p.282.

(48) Aylmer to Goderich (Private), Jan. 30, 1833, Q.206, p. 258 (Smith trans.).

determination to carry Lower Canada out of the Empire, and establish it as a republic on the model of the United States. His new stand could never win Neilson's support. In a letter of March 31st, 1834, Neilson explained his reaction to the new policy of Papineau and his party as follows:

Depuis que quelque membres de la Chambre se sont acharnés à attaquer les institutions du pays et la Constitution que nous étions tous réunis à défendre, ma position comme représentant m'a été bien désagréable. Je ne pouvais plus agir avec beaucoup d'entre les membres, avec qui j'étais autrefois d'accord. Je voyais le fruit de notre travail de plusieurs années et de grandes sacrifices personnel[les] de ma part presque perdus. La division devint apparente parmi ceux dont l'accord nous avait donné notre force pour la répression des abus, et la confiance du gouvernement anglais que nous avons obtenu en 1828 hasardé. Vous sentirez bien comme cela devait être pénible à une personne qui aurait toujours préféré les douceurs de la vie privé aux affaires publiques et qui n'y a entre que par un sentiment de devoir envers des concitoyens avec qui il avait si longtemps (word illegible) et qui lui demandait [qu'il] se sacrifie. Le bien qui peut résulter au pays est dans ces circonstances la seule récompense de nos efforts. Ce bien nous échappe par la conduite, non des ennemis du pays, mais par celle de ceux qui doivent en être les amis, mais qui se laisse[nt] guider par des passions du moment ou [par] un désir outré de perfectionnement qui n'a souvent produit que des malheurs. (49)

Neilson's correspondence shows that some of his French-Canadian associates understood his views and recognized their consistency. On March 24, 1835, F. A. Quesnel of Montreal, a prominent member of the Assembly, wrote Neilson a fine letter of praise for his public services in which he said: "Vous êtes sujet anglais attaché à votre constitution, vous êtes Canadien d'affection et d'intérêts, vous êtes de plus l'homme de 1827 et 1828." (50) H. Heney of Three Rivers, in a letter of March 27, 1835, also maintained that Neilson was actuated by the same moderate principles in 1834

(49) Draft of a letter from Neilson to Rev. L. Raby, March 31, 1834, Neilson Papers (photostat copy), summarized in the Report of the Public Archives of Canada for 1918, p.526.

(50) Neilson Papers (photostat copy).

as in 1828. He defined those principles as follows:

Vous pensez, comme nous pensions en 1828, qu'il existe des abus, qu'il y en a dans toutes les institutions humaines, par cela même qu'elles sont humaines: qu'il est licite de tâcher de les corriger et de les faire disparaître par tous moyens décents et loyaux, sans en appeler à la sédition et à la révolte: qu'il faut réparer la maison, et non pas la renverser: que les jeunes gens ne sont pas les meilleurs conseillers dans les affaires graves: que le principe électif quoique bon en soi-même devient très vicieux lorsqu'il est exploité dans des vues de haines nationales, de discussions religieuses, ou autres motifs intéressés. (50)

Add to these proofs of Neilson's consistency of opinion, the fact that he remained as zealous as ever in his championship of the rights of the French people and in his faith in their loyalty to British institutions and the British connection. His reaction to the proposal, made in 1833, to annex the island of Montreal to Upper Canada is significant. In a speech, which nearly equalled some of Papineau's in vehemence, he referred to the proposition as "a shameless proposal unequalled political crime." "We are now justified," he continued, "in standing forward to oppose the remotest prospect of such an iniquitous scheme being carried into effect - a plan of unmingled infamy - of malice aforethought - a violation of our capitulation, of the Acts of Parliament that guarantee our rights to us, and of that good faith which is pledged to us by Great Britain." (51)

When the electors gave their approval to the schemes of Papineau and his party in 1834, Neilson realized that the censure should fall on the leaders, and not on the people themselves.

(50) Neilson Papers (photostat copy).

(51) Proposed Annexation of Island of Montreal to Upper Canada, House of Assembly, Jan. 19, 1833, Q.206, p.655. (Smith trans.).

The power of exciting the honest prejudices of the majority of the people of French origin, and of operating on the hopes of numerous vain, presumptuous, unprincipled, and hungry partisans, will wear itself out in time. The tree will be known by its fruits. Little will eventually remain to the chief managers, but the indelible stain of GUILT they will hear the reproaches of an honest and too confiding people, whose real and progressive happiness, under the British government, they have so cruelly disregarded and endangered to follow in the paths of that ignorant and presumptuous quackery and atrocious ambition, which, in our own days, have desolated so many countries.(52)

Such being Neilson's opinion of the popular party in 1834, their association of sixteen years came to an end. For so many years had Neilson been urging the Canadians to be moderate in their demands and patient in their pursuit of them; for so many years had he been encouraging them to place their faith in the principles of perseverance, uprightness, and loyalty to the constitution. All too frequently had he looked on in silence while the leaders indulged in violent attacks on some personage or institution or practice. Instead of learning restraint and discretion, as Neilson hoped, the Assembly became more and more impatient, and succumbed more and more frequently to the dictates of passion and prejudice. Those with whom he had been associated in the struggle for well-ordered and impartial government refused any longer to heed his advice. Regretfully, he severed his connections with them, and followed the path which his principles and his obligations as representative pointed out to him. Unhesitatingly, with the stoicism of a Cato, he sacrificed friendship to duty. It must have been just such conduct that prompted his friend, Pierre Bédard, to add as a postscript to one of his

(52) Article by "Constitutionalist", Christie, IV, 22,n.

letters: "Je lis de temps en temps l'histoire romaine
C'est vous, je trouve, qui ressemble plus à un Romain, de tous
ceux que je connais." (53)

(53) Bédard to Neilson, June 11, 1826, Neilson Papers
(photostat copy).

CHAPTER VIII

CONCLUSION

After 1834 Neilson continued to take that interest in public affairs which he had always considered to be his duty as a member of society. The respect with which his suggestions were received showed the weight attached to his opinions, and the confidence reposed in his ripened judgment and long experience in public life. But, actually, Neilson's day was over. Until 1838, while the demagogues held sway, he could exercise little influence in public affairs. The followers of Papineau were succeeded in power by the advocates of union and Responsible Government with whom also Neilson had little sympathy. When his program of reform had been achieved, he had few constructive proposals to offer. At this period in his career his aim was a very general one. "Fidelity to the Sovereign, to our connexion with the old country, and a determination as much as in us lies to support the established authority, and promote the peace, welfare and good government of the country ought," he (1) thought, "to be the main political objects of all its inhabitants."

Although Neilson's political principles varied little after 1834, the strain of conservatism which had always run through them visibly deepened in reaction to the excesses of 1837. The conduct of the French party shook his faith in the justice and equity of popular government and his belief in the ability of the

(1) Quebec Gazette, 1838, Christie, V, 197.

Lower Canadians to administer their own affairs. He, who had for many years been one of the strongest advocates of self-government, wrote in 1835:

I do not think that we are arrived at that time, when the people can or ought actually to govern the colony. I believe to attempt it now would be destructive of our peace and prosperity. Educate, improve the country, increase its population, all in a spirit of justice and peace to all the inhabitants. . . . I think is the policy for the colonies I know too well the change of circumstances in America since the separation of the old colonies to have any great apprehension of danger to the liberties of the people from the other side of the Atlantic.(2)

In Neilson's opinion their descendants would run more risk from anarchy and popular despotism than from power of influence from Europe.

The idea of power in this country resting on the national prejudices of a majority is inseparable from that of despotism. A government of party in a state is bad enough, for it is liable to very little responsibility. Every bad and unjust act of party rulers is excused by the party forming the majority because these rulers are of the party. If the party is national it is much worse, there is no responsibility at all, but a rank, blind, and hateful despotism, the same in character as was exercised in old times when majorities of religious denominations virtually possessed (?) the government of the world. (2)

Consequently, Neilson continually urged the British ministry to adopt a firm policy, carry on the government independently of party or faction for the benefit of all, and avoid all unnecessary innovations. Specifically, he advised the British Government to resume its control of the administration by repealing the Imperial Act of 1831, which had surrendered certain duties to the control of the Colonial Legislature, "on the grounds that the Assembly had made no provision for the support of government and the administration of justice since

(2) Neilson to W. L. Mackenzie, Nov. 24, 1835, Neilson Papers (photostat copy).

the passing of that Act, but used the powers thereby confided to it to paralyze the government and the administration of justice and coerce the British Parliament and Government into changes of the established constitution." (3) In 1838, Neilson so far belied his former principles as to propose the temporary suspension of the Legislative Council and Assembly and the issue of ordinances of the Queen in Council for the peace, welfare, and good government of the province, subject to the restrictions of the Imperial Act of 1774. (4)

These conservative proposals formed part of the program of the so-called Constitutional Associations which were organized in opposition to the patriote party. Neilson took a prominent part as a member of the sub-committee of the Quebec Association and as its agent in London in 1835. The instructions given to Neilson for his guidance in England pointed out the necessity of repealing the Howick Act of 1831, of constituting the Legislative Council as a tribunal to try public officials impeached by the Assembly, of appointing to the Executive Council the heads of departments and at least an equal number of men unconnected with the Government, of disqualifying judges from sitting in either of the Councils, of providing for the independence of judges, of reforming the system of judicature, and of establishing a basis of representation that would be more just to the British inhabitants of the colony. (5) In England, Neilson

(3) Draft of letter from Neilson to Lord Ripon, July 1, 1835, Neilson Papers (photostat copy).

(4) Draft of letter from Neilson to Lord (Gosford), Feb. 26, 1838, Neilson Papers (photostat copy).

(5) Report of the Sub-Committee of the Executive Committee of the Constitutional Association of Quebec, March 25, 1835, Neilson Papers (photostat copy).

communicated with Lord Glenelg, the Colonial Secretary, but in the month of July, the English Government decided to recall Lord Aylmer and send a Royal Commission to Quebec to conduct an inquiry into the administration of the province. Neilson immediately returned home. At first, he was not well pleased with the efforts of the Commission which seemed to him to lack the firmness and energy necessary to cope with the situation. However, the revelation of Glenelg's dispatch to Gosford of July 17, 1835, by Sir Francis Bond Head, Governor of Upper Canada, momentarily assured the Constitutionals that the British Government was not disposed to adopt any rash suggestions. (6)

On the patriotes, however, the dispatch had a very different effect: it precipitated their revolt in 1837. The uprising did not destroy Neilson's friendship for the French-Canadians. He saw clearly that they were under the influence of their leaders. At the same time, he condemned the administration for its weakness in permitting the rebellion to come to a head.

It is not surprising that there should be weakness in a government against which a faction commanding a majority in the representative branch has been permitted for several years to direct all its energies, while the constitutional prerogatives of the Executive have been used to put power in the hands of those bent on its destruction. . . .

In the present state of affairs in this Province, we confess we feel disposed to make disadvantageous comparisons between a monarchical and republican government. Had General Washington shown as much indecision as is shown in this Province, when the whiskey insurrection was organized in Pennsylvania. . . . the United States would have been deluged with blood, their free constitution of government destroyed by illegal violence. . . . (7)

(6) Christie, IV, 290.

(7) Quebec Gazette, Nov. 3, 1837, Christie, IV, 413.

In the autumn of 1837, just at the time of the outbreak of rebellion, Neilson returned to public office. On August 22, 1837, he was called to the Executive and Legislative Councils. He accepted the second position, but refused the first, owing to the death of his son which threw on him the management of the newspaper. (8) The Constitution of Lower Canada having been suspended on January 16, 1838, Neilson on April 2, 1838, was appointed a member of the Special Council, which assumed control of the government. This Council was dissolved by Lord Durham, who created another from his suite. After his departure, Neilson, on November 1, 1838, was again appointed to the Special Council, and continued as one of its members until the union of the two provinces.

The famous Report by Lord Durham did not win Neilson's approval. Its two chief proposals, union and Responsible Government, found in him their most irreconcilable opponent. Durham, on the other hand, grossly misjudged Neilson, referring to him as one of the "âmes damnées" of political jobbery." (9)

On June 14, 1840, Neilson sent in his resignation from the Special Council, where he had found himself in the minority on the proposal of union, ostensibly owing to the state of his wife's health. (10) However, in the last month of 1841, he accepted the nomination for election to the Assembly from his old county of Quebec. He was elected and retained his seat from April 8, 1841, to September 23, 1844. One observer described his conduct

(8) Neilson to Lord Gosford (Draft), Oct. 4, 1837, Report of the Public Archives of Canada for 1918, p. 539.

(9) Lord Durham to Poulett Thomson, Sept. 1, 1839, ^{facsimile in} Shortt and Doughty, Vol. IV, opposite page 406.

(10) Neilson to _____ (Draft), June 14, 1840, Report of the Public Archives of Canada for 1918, p. 542.

in the House as follows:

The venerable John Neilson of Quebec is the Dean Swift of the House. He says what he pleases; is witty, waggish, impudent or polite as he pleases. He is tolerated at all times, out of order as well as in it. (11)

Sir Charles Metcalfe, who became Governor in March, 1843, offered Neilson the post of Speaker of the Legislative Council, which he declined. On the famous question of patronage, Neilson did not see eye to eye with the followers of Baldwin and Lafontaine. He disapproved of the action of the two leaders in resigning from the Council when the Governor made appointments without asking their advice. As a result of his attitude on this issue, Neilson was defeated in the ensuing elections. In the same year, he was appointed to the Legislative Council.

In January, 1848, Neilson read, in his capacity as president of the Saint Andrew's Society of Quebec, an address of welcome to Lord Elgin, during whose administration Neilson's old bugbear, Responsible Government, was finally recognized in Canada. On that occasion, Neilson took a chill from which he never recovered. He continued, however, to write for his paper, and it may be truly said that he died in harness. The very evening before his death he wrote off for the next issue of the Gazette his last words to his fellow-citizens, which were published on January 31st.

The funeral address was delivered in St. Andrew's Church by Dr. Cook, who praised Neilson for his activities in public and private life. Referring to his conduct as a private individual,

(11) C. C. W., a Kingston correspondent of the Brockville Statesman, as quoted in Dent, I, 93, n.

Dr. Cook described him as one

who for more than fifty years had been known in a community, as a good and valuable citizen; who had early established a character for inflexible honor and uprightness, and continued to bear it to the last; in whom steady application to the duties of life, and purity of moral principle, were combined with the powers of a singularly shrewd and clear and perspicacious understanding, and a promptness to bring the strength of his understanding, and the weight of his character to bear upon every measure that was designed to promote the general good. (12)

Of Neilson's public life, Dr. Cook said:

Let such a one, with all the claims to respect in a limited community have also for a long period of time applied his talents to the higher duties of the legislator and the statesman, with honor to himself and advantage to the public; let him have set an example, known and acknowledged by all, and but too rare in the unhealthy atmosphere of provincial politics, of a perfectly honest and independent man, actuated by no selfish motives; seeking no personal advantage, deferring neither to the men in power, nor to the popular leaders, when in his own clear judgment, he thought either in the wrong; ready to co-operate with any party, up to the point, that in his conscientious opinion, they were seeking the public good, and their efforts tending to promote it; sure to leave and oppose them, the moment they overstepped that point, without regard to party connections, or the abuse which his independent conduct could not fail to bring down upon him, and that too, from different points in the political compass; the determined foe of every abuse in the executive government, and yet in whom unflinching loyalty was not the dictate of convenience and temporary expediency, but a principle of honor and conscience, which his reason approved, and to tamper(12) with which, he counted a crime, to be regarded with abhorrence.

It is difficult to estimate the contribution of a single individual to achievements which are the result of the combined efforts of many, but undoubtedly John Neilson rendered invaluable service to Lower Canada in his capacity as a member of the Assembly. It is true that his reforms did not strike at the root of the difficulties of administration from which the colony was suffering.

(21) Quoted by Morgan, p.306.

The insurrection of 1837 and the unsettled state of political life in the following decade are sufficient proof that his remedies, which were fully applied by 1834, merely repaired temporarily a system that gave no general satisfaction until the introduction of Responsible Government. Nevertheless, whether Neilson intended it or not, his activities did much to facilitate the attainment of Responsible Government, and in a way which was perhaps more beneficial than the precipitate application of the new principle to the administration of affairs in Lower Canada.

Moreover, the reforms advocated by Neilson—the independence of judges, improvement of the administration of justice, more adequate educational facilities, appointment of officials more intimately connected with the interests of the majority of the inhabitants, government for the benefit of all without distinction of national origin or religious creed, and so on — had an intrinsic value, aside from their connection with the movement towards Responsible Government. All were designed to make the best use of the instruments at hand, and thus, in Neilson's opinion, they were worthy of the support of sensible men. Idealism never blinded Neilson to the possibilities of the present.

Perhaps even more praiseworthy than his reforms was the manner in which he sought to achieve them. He had none of the attributes of a demagogue or agitator, and he was conspicuously lacking in one essential of the popular tribune, the gift of eloquent speech. But he made up in vigour of intellect what he lacked in oratorical powers, and he applied the abilities he had to the most worthy objective he could find — the achievement of reform by constitutional means.

There were undoubtedly a few men in Canadian politics in this period, who were more far-sighted than Neilson. There were also more influential men, but none, except Papineau, enjoyed more influence with the French. None could play with such consummate ease and such sympathetic understanding the rôle of mediator between the inhabitants of French and Anglo-Saxon origin. John Neilson was the outstanding exponent of the principles of justice and harmony in all the relations of the two racial groups with each other. His greatest distinction was that he, an Anglo-Saxon, fought the battles of the French-Canadians. It was this service, no doubt, which prompted Audet to say:

Le gouvernement de la province de Québec a donné le nom de Neilson à un canton du comté de Québec. C'est bien, mais c'est peu. Ce n'est pas suffisant; il lui doit une statue.(13)

(13) Audet, Trans. Roy. Soc. of Can., 3rd ser., Vo. XXII (1928), sec. i, p. 96.

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