

THE MARQUIS OF NORMANBY AND MR. KERR, LATE A JUDGE OF THE COURT OF KING'S BENCH AND VICE ADMIRALTY, AT QUEBEC.

In the House of Lords, on the 12th March last, a Petition was presented by His Grace the Duke of Richmond from Mr. Kerr, complaining that after a service of nearly forty years under the Crown in this Province, he had been authoritatively deprived of office, without citation and without trial, and praying relief.

The reply of the Marquis of Normanby to the Duke of Richmond, as reported in the *European* of the 19th March, is so specious, containing, as it does, but "half the truth," that as the son of a much injured father, I have considered it to be my duty to prepare a Memorandum exhibiting the whole facts of the case, which memorandum I crave you will do me the favour to insert in your paper.

I am, Sir,

Your obedient servant,
J. H. KERR.

Quebec, 1st May, 1841.

MEMORANDUM.

Mr. Kerr held the offices of Judge of the Court of Vice Admiralty for Lower Canada for a period of thirty-seven, and that of Judge of the Court of King's Bench, at Quebec, for twenty-seven years—was Speaker of the Legislative Council during the session of 1827, and Chairman of the Executive Council in 1830 and 1831, and a member of that Board for twenty years.

At the time Mr. Kerr accepted the office of Judge of the Vice Admiralty Court, viz.: in August, 1797, a prize jurisdiction was attached to the Court—that jurisdiction was cancelled in 1801 and transferred to Halifax.

Upon the prize jurisdiction being so abolished, Mr. Kerr lost no time in demanding compensation for the loss sustained by him thereby, the fees allowed to the Judge in prize cases being the principal inducement which led him to relinquish his practice at the English Bar and to accept office abroad.

Mr. Kerr followed up his claim, at different times, without obtaining any decided reply thereto from those in authority.

In the year 1815 a sum of £1,190 6s., arising in a case of salvage, was paid into the Court of Vice Admiralty. The Registrar of the Court was absent on the frontier, serving in the embodied militia, and this sum was remitted, by Mr. Kerr, to be vested in his official name in the British funds.

In 1816 Mr. Kerr visited England, on leave of absence, and being in London he tendered to Sir Claude de Crespigny, the Receiver General of Droits and Perquisites, with other sums that had accrued to the Crown, the said amount of £1,190 6s. which that officer declined receiving, on the ground that no sufficient condemnation of it had been made to the Crown.

In 1819, when Mr. Kerr returned to Canada, the sum in question was, on motion of the Deputy Receiver of Droits, who had been appointed to prosecute the claim to issue, condemned to the Crown.

This condemnation was reported to the proper quarter, and Mr. Kerr again urged his claim to compensation for the loss of prize fees, and in 1824, through Sir Francis Burton, who then administered the Government of Lower Canada, he prayed to be allowed to retain the said sum of £1,190 6s. in part satisfaction thereof.

A lengthened correspondence arose upon the matter, between the Secretary of the Treasury, the Receiver General of Droits and Perquisites, and Mr. Kerr, who was informed in a dispatch from Mr. Secretary Herries, dated 1826, "that the Lords of the Treasury would not feel themselves at liberty to entertain the consideration of Mr. Kerr's petition until a remittance was made of the £1,190 6s. to the Receiver General of Droits;" and further, "that their Lordships would have great difficulty in admitting the claim to compensation until certain information, alluded to in Mr. Herries's letter, was furnished."

Mr. Kerr immediately after the receipt of Mr. Secretary Herries's letter, communicated with the Receiver General of Droits, informing him of his reasons for not then making the remittance, but he assured him of his intention of doing so, at as early a day as possible, so as to facilitate the admission of his claim to compensation, which, otherwise, it had been intimated to him by the Treasury, would not be entertained.

To this communication no answer was ever received, and all correspondence on the subject ceased from that day, and Mr. Kerr was thus led to infer, that his claim to compensation had been tacitly admitted by the Treasury, who were well disposed to get rid thereof on such favourable terms, as to allow him to retain the £1,190 6s., being little more than one-fourth of the sum which should, in equity, have accrued to him.

Mr. Kerr was, however, firmly impressed with a belief that justice would eventually be extended to him, and in November, 1833, he proceeded to England for the chief purpose of defending himself from certain absurd charges brought against him by the Assembly and bringing this long pending matter to issue; and immediately on his arrival in London he waited on Sir James Graham, the first Lord of the Admiralty, and unreservedly explained to him his situation in respect to his claim and the money re-

tained by him in part satisfaction thereof,—he carried with him all the information called for by the Treasury in 1826, shewing that he had a right, in equity, to receive as compensation a sum of £4,088 sterling.

That no obstacle might be interposed to a settlement of his claim, he, on the 12th March 1834, in good faith, without being called upon, as it is insinuated he was by Lord Normanby, in any way, or by any person, he paid over the £1190 6s to the Receiver General of Droits, and took that Officer's receipt therefor, which is now in his possession.

The Treasury decided unfavourably on the prayer of Mr. Kerr's petition for compensation, much to his disappointment.

Seven months nearly after the payment so made by Mr. Kerr to Mr. Callendar, the Receiver General of Droits, viz.: on the 24th Sept. 1834, the Lords of the Admiralty, refusing to give any reason therefor, though requested to do so, informed him, that they did not intend to call upon him to resume his duties as Judge of the Vice Admiralty Court at Quebec, and Mr. Spring Rice, the Colonial Minister, in the following month endeavoured in a despatch to Mr. Kerr, to intimidate him, by authoritatively calling upon him to resign his seat as Judge of the Court of King's Bench at Quebec, in order, as was therein stated "that a due consistency in the Departments of His Majesty's Government might be preserved."—This was followed by another letter, dated 13th Nov. 1834, in which are the words "in case you persevere in declining to pursue the course pointed out to you, Mr. Spring Rice will have no other alternative than to consult the law authorities as to the proper mode of dealing with your case."

On receiving this letter, Mr. Kerr naturally conceived that the law authorities would have been consulted before his case was decided upon; but on the 9th March, 1835, when Mr. Spring Rice was not in the Administration, he was pleased to declare in the House of Commons, that as Mr. Kerr was dismissed from his situation as Judge of the Vice Admiralty Court from misconduct, he thought him unfit to fill the other situation as Judge of the King's Bench, and he had ordered Mr. Kerr's suspension.

The Earl of Aberdeen, who succeeded Mr. Spring Rice in the Administration, as Colonial Minister at a critical period, did not think proper to alter the course that had been taken by Mr. Spring Rice, but he thought it due to Mr. Kerr (who had an interview with him on the 24th March, 1835) to offer to procure for Mr. Kerr, payment of the £4088 sterling, and interest, which Mr. Kerr had claimed as compensation, for loss of fees, but as the offer was made under the condition that Mr. Kerr should resign his seat in the Court of King's Bench, he declined to accept of his Lordship's offer. Mr. Kerr was finally superseded in his office of Judge of the Court of King's Bench, by the appointment of Mr. Elzeur Bedard, a member of the Assembly, and the mover of the ninety-two resolutions, on the 22nd February 1836, and of that of the Vice Admiralty, on the 18th September following.

At the time Mr. Kerr was so superseded, the Crown owed to, and were in default to him a sum of no less than £2303 11s 5d which has been since acknowledged and unwillingly paid in several sums and at different times to him, the last payment having been made only in March, 1840.

In Canada it is very generally known that a desire to conciliate the leaders of the Assembly was the whole and the sole cause, which led to Mr. Kerr, who was obnoxious to them, being sacrificed at the shrine of expediency.

At the age of seventy-six years, the mental and bodily energies of Mr. Kerr, cannot be supposed to be what they once were—Would that they were—and justice would not be withheld from him.

Sir James Stuart was in 1833, sacrificed at the same shrine of expediency, as Mr. Kerr, to the clamour of the Assembly,—having at a much less advanced age than Mr. Kerr, a full possession of all his energies, he has been enabled to obtain a decided victory over the almost same ministry which degraded him, and has recently been, deservedly, elevated to be Chief Justice of the Province and a Baronet of the United Kingdom.

The documents below will show in what light the undeserved, the cruel, and ungenerous treatment of Mr. Kerr has been viewed by those acquainted with the whole of his case.

JAMES H. KERR.

Quebec, May 1st, 1840.

Dalhousie Castle,

13th January, 1835.

MY LORD,—The Honourable Judge Kerr, one of the Judges of the Court of King's Bench at Quebec, and Judge of the Admiralty in that Province, has informed me of the various communications he has had with the Colonial Department, and having now occasion to renew his application to your Lordship, requests me to address you a letter expressive of my personal acquaintance with him. I comply with his desire without any delay, and beg to state to your Lordship that I consider his case an unmerited and cruel one.

During the eight years in which I held the situation of Governor in Canada, Mr. Kerr was a Judge of these two Courts, as also a member of the Executive and Legislative Councils, esteemed and honoured as such in society, and his opinion and advice in Council was always consistent, constitutional,

upright and decided,—as such I felt it my duty, as my inclination, to honour him, and in the latter period of public life, I do not hesitate to recommend him to your Lordship as deserving, in every way, to receive the reward due to a man who has ably and faithfully served his King and country.

I am happy in having this opportunity to express my sentiments of him to one so able to appreciate them.

I have the honour to be,

My Lord, &c.,

(Signed,)

DALHOUSIE.

To the Earl of Aberdeen.

Castle of St. Lewis,

Quebec, 13th Dec., 1837.

SIR,—I have been directed by the Governor in Chief to acknowledge the receipt of your letter of the 13th ultimo, and to acquaint you in reply, that he has had much pleasure in meeting your wishes, by forwarding to the Colonial Office, your Memorials to the Queen and Secretary of State for the Colonies, on the subject of the situations lately held by you as Judge of the Court of King's Bench and Vice Admiralty in this Province. His Excellency has desired me to add, that in transmitting these Memorials to Lord Glenelg, he testified to your bearing an irreproachable character, and to your enjoying the respect and esteem of all who possess your acquaintance. Regretting that an unusual pressure of public business has prevented my making this communication at an earlier period,

I have, &c.

(Signed,)

S. WALCOTT,

Civil Secretary.

The Hon. JAMES KERR.

Charlemont, Kent,

13th August, 1836.

MY DEAR KERR,—It is so long since I had heard of you that I was glad to find from your letter that you were, although like myself old, still in the land of the living. It will give me great pleasure to present your petition for you, or to do any thing else that may be of use to you—you say I am to present it the next session of Parliament—I will keep it, and if then able to attend, will do as you desire. I have read it, and I fear the House of Lords can do nothing for you. It seems to me that you should petition the King, who would, most probably, be advised to refer the case to the Judicial Committee of the Privy Council. It will be by that Committee patiently heard and impartially decided on. I cannot assist you in presenting such a petition, because I am one of the Judicial Committee.

Ever, my Dear Kerr,

Faithfully yours,

(Signed,)

WYNFORD.

(Lord WYNFORD, formerly Lord Chief Justice BEST.)

JAMES KERR, Esq., Edinburgh.

Windsor Castle,

16th March, 1837.

MY DEAR MURRAY,—I have submitted your letter of the 13th instant, and the enclosure to the King, and have, by his command, referred Mr. Kerr's Memorial only to Lord Glenelg, with His Majesty's opinion, that the case appeared deserving of consideration. I will let you know the result, and in the meantime return Mr. Kerr's letter.

Believe me, &c.,

(Signed,)

H. TAYLOR.

To Lieutenant General,

The Right Honourable

Sir GEORGE MURRAY, K. C. B.

Report made by a Committee of the whole Executive Council of Lower Canada, dated 27th March, 1839, on a Memorial of the Honble. Mr. Kerr, praying that a pension, or remuneration, may be granted to him for his long services as a Judge and Executive Councillor in Lower Canada, and approved by His Excellency the Governor General, Sir John Colborne, in Privy Council.

The Committee has not failed to devote their most serious attention to your Excellency's reference of the Memorial of the Honble. Mr. Kerr, and having had communication of his printed statement (a copy of which is hereunto annexed) they have come to the unanimous opinion that it is a case of singular hardship and severity, the Committee therefore do not hesitate most earnestly to recommend that the prayer of the memorialist may receive from Her Majesty's Government the most favourable consideration, and that your Excellency may be authorised to propose to the Special Council such pension, or other remuneration as may be judged, under the very peculiar circumstances of the case, suitable, with reference to the several high situations which Mr. Kerr has held in the Province, for the last forty years, and of which he has been lately deprived without any judicial trial.

(Certified,)

G. H. RYLAND.

COPY OF MR. CALLENDAR'S RECEIPT.

Received, 12th March, 1834, of James Kerr, Esq., Judge of the Vice Admiralty Court, Lower Canada, the sum of eleven hundred and ninety pounds six shillings, the amount of Droits of Admiralty paid into the Registry of the said Court in the years 1815 and 1819, and condemned to the Crown.

£1,190 6s.

(Signed,)

A. S. CALLENDAR,

Receiver General Droits Admiralty.

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