Jan. 18. 67.

My dear Lord Carnarvon

What a lamentable state of things! I only hope that this snow (thyth passed over) means some softening and will be to your advantage.

I do not see that the Honduras can admit of action or comment, except so far as approving his I Grant goes. What he

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did, in the absence of instructions to the contrary — & indeed ~~in~~ perhaps in any case was clearly right.

I am glad that the Bp. of Oxford has at any rate stayed of the acceptance of the Natal Bpric by Butler.

I take it for granted that he considers the deposition of Colenso by the Bp. of Capetown to be good by the Law of the Church, though bad by the Law of the Land — i.e. canonical though not legal.

I don't see how he & the Archbp. reconcile parts of their ~~at~~ reasoning with Romilly's judgment — wh. I have been just reading in a corrected shape. It ~~may~~ makes me boil to read it, & to feel that

1780

the Church is made a shuttlecock to be hammered to and fro by their legal battledores.

We have now clear legal authority for saying that all these Bps. have diverses and clear legal authority for saying they have not.

When it is damaging to the Church to say that they have not (as in the deposition case) the Whig tribunals will rest upon Ld Westbury — when it is damaging to the Church to say that

1781

they have not (as in the Colenso trust case) then they will rest on Romilly. And so it will continue impossible to establish any such clear footing as will enable us even to make the seal of of a bad certainty.

I suppose nobody is a judge (in point of law) of a case which he makes his own, but I feel the worry

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so keenly, that if I had myself leisure & liberty to fall upon them, I really shd. have the audacity to do it, and without hopes of doing them some mischief.

I suppose you have Reilly's draft

One part requires explanation. — The clause 40 A. is intended as an alternative clause for 39 and 40. — 40 A. expresses the view I have always contended for. — 39 and 40 express what we supposed to be the view you entertained at the close of the interviews with Lord Monck.

That is to say I divide subjects of legislation (other than those of a simply general character) into two classes

1. Those in which local interests require protection

1782

against an adverse majority where the requisite protection is given by § 37. 38.

2. Matters where ~~the subjects~~ ~~are~~ there is little or no reason for supposing that the General Legislature will be unfair to any particular locality, but ~~in~~ which, from their nature are in the main proper subjects for local legislation. These I shd. provide for by Section 40. A.

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You on the contrary are supposed to wish, or to have wished to divide them into two classes

1. Subjects for Exclusive local legislation §-39.

2. Subjects for concurrent local legislation § 40.

Yours very truly

Frederic Rogers.

I shall send Reilly a few suggestions of amendment in detail

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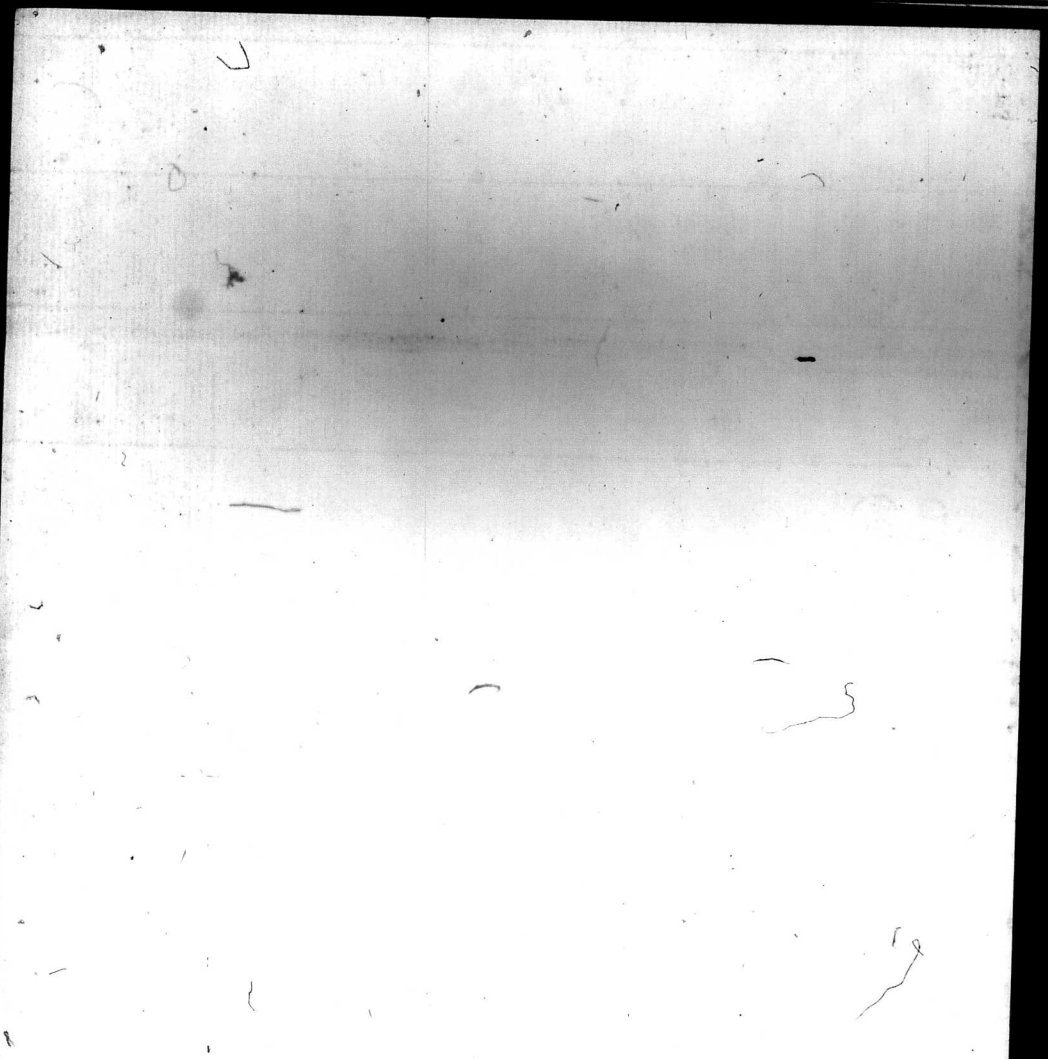

Sir F. R.

Jan 18-67.

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