

court But says the learned Gentleman's resolutions the granting injunction has been found convenient; no doubt they are at times to the party subject to them; and I can best elucidate this by reference to one issued in a cause, where my learned friend was Plaintiff at Law and my learned friend Mr Gray & myself were the Council for the defendant. The Plaintiff at law had proceeded upon a note made many years before by A. and B. (who had borrowed money) and by C as their surety, but not named as such in the note. The plaintiff and those who had the interest in the note, had dealt with A & B, the principals, without any reference to the surety, who had supposed the note paid. A note had actually been taken at a short day for the balance due on the original note, which was not paid. A & B became bankrupt, and plaintiff sued all the parties on the old note. C the surety had no defence in a court of common law, he could not prove there that he was a surety. A bill was filed in Chancery, and an injunction came down to my learned friend which I have no doubt was inconvenient to his client, and no little surprise upon himself. The cause was brought before the Court of Equity; the plaintiffs at law, now defendants there, acknowledged all the important facts, and on a motion to dissolve the injunction, the cause was detained in court by the decision of the Master of the Rolls; and when I mention him, I am in justice bound to say that there are few such minds, few professional men who have even the industry he possesses, and few who can equal him in talent. He is an ornament to the Court over which he presides, and much as I respect the judges of Common Law, I will never consent to allow an appeal from his decisions, to Gentlemen who are engaged in a different course of reading and study, and whose oath of office, as well as their every day training compels them to decide according to the rules of the common law. But in the very case I have been considering, namely that of injunctions, there is to be an appeal to the court which is to be restrained by that writ, from proceeding. I have been engaged in many cases of injunction where the plaintiff would listen to no terms at Common Law; and I can bear witness to the learned gentleman's resolution in so far—I never remember a case, in which the plaintiff at Law did not consider it wondrously inconvenient. (Here the learned Speaker explained the practice, as to the writ of *Ne exeat Provincia*, and the advantages derived from the authority of the court in such cases.) Sir, the rules which regulate the court are already made, and the discretion of the Judge, will accommodate them to the local circumstances of the country—we, Sir, are competent to many things, but heaven knows, we are far from competent to frame a Constitution, such as this resolution contemplates. The Governor is the Chancellor, and on an appeal he may have the advice and opinion of the Common Law Judges, but it will be out of time to create such a strange appellate jurisdiction, until we hear real complaints, as to the ultimate decision of this court. We have heard that New Brunswick has no Master of the Rolls—Sir, I have not the honor of being personally acquainted with the Lieut. Governor of that Province, but from all I have heard of him, I believe him to be a gentleman possessed not only of great talent, but who has made himself intimately acquainted with the legal institutions of the province committed to his Government—and his Message to the House of Assembly, which a gentleman put into my hand at the moment I was rising to address you, is the best evidence I can offer of this opinion. New Brunswick, for whose Judges and Barristers, as a Colonist, I not only entertain a high respect, but feel, I trust an honest

pride, finds it necessary to follow in our steps in this particular, and I have no doubt, such an Officer will be established in that province. (Here the learned Speaker read the despatch—he then turned to the resolutions—to the Court of Marriage and Divorce, upon which he dwelt at great length, showing the opinions of the former learned Chief Justice and Dr. Crooke, in cases in which he had been engaged and the many obstacles they threw in the way of separating man and wife, and the sound reasons for such a course.) But, said the learned Speaker, the times are altered, that court which was first composed by the whole Legislature, and afterwards by withdrawing the Assembly from it, was composed of the Governor and Council only, not as integral branches of the Legislature, for that point had been decided in a case, in which many years ago he had been engaged; but as members comprising one court, of which the governor, the Chief ordinary, was the head, and held the great seal to be affixed to their decrees; that court was to be suspended by the appointing of 5 Commissioners, any 3 of whom would form the court, and to encourage suits before such a tribunal the Judges were to act gratuitously. What inducement in the name of Heaven could the Legislature have to establish such a tribunal? Was it of importance that those who were united by a solemn obligation during their joint lives, were to be encouraged to seek separation in a most extraordinary tribunal, and that without expense.

The next resolution, and the object of it was equally extraordinary, it relates to orders for the Sale of Insolvent Estates of Testators, or inheritors. This power was also formerly exercised by the Legislature, but almost since the first settlement of the Country, has been confided to the Governor and Council. The Governor, by the advice of his Council, appoints Commissions, under the law, and the returns are made to the Secretary of the Province, and Records are kept by him, and the whole business done without fee, except a small sum for the Licence. What is proposed in the place of this ancient course of proceeding? That the Judges of Probates in the several Counties, who may be and who often are subject to party influence are to name the Commissioners and the proceedings are to be addressed to, and the orders made by, the Supreme Court in Term time, or two Judges at Chambers—Try this to detail—who is to keep the Registry? And by whom to be paid?—The Governor and Council can always be found, but during the Summer Circuits, where will you find two Judges at Chambers—if you could—have they a Clerk? Are they to purchase the enormous Volumes which must be necessary to contain this Registry, and is this Book to be carried from the court to the Judges chambers and then returned, and if so by whom, and for what fee? But Sir, this is changing for the sake of change. During a long practice I have never heard a complaint of the Governor and Council as a Tribunal, and I will not assent to such an innovation.

The Learned Speaker then turned to the resolution, which not only abolishes the Common Pleas but contemplates the changing of every court in the Country from the days which they are now held to uncertain days, which could only be ascertained by calculation, and the Judges of the Supreme Court at Halifax are to fill in one of these terms. This the learned Speaker denounced, and also the proposal that the Sessions and the Supreme Court should sit together in each county, so that the Sessions should have the advice of the Judges of Supreme Court, in all matters in which they might require it.—When, said the learned Speaker, are the Justices to sit? the learned Gentleman must have taken the idea from the

outer and inner courts of Scotland but here the Sessions must sit out of doors, or each County must have two court Houses—and how comfortable for a Judge to be interrupted in the trial of a Cause to give advice to the Sessions which were also supposed to be sitting; and what appeal could lie to the Supreme court from the Sessions, when their proceedings were regulated by the order of one of the Judges of that court? This plan, he said, was like many of the others the dreams of a legal mind and not the offspring of the awakened intellect of the learned Gentleman.

Sir, the return days of writs in the Court Westminster are not changed, though some of them fall on a Sunday, but no legal act is done until Monday. In the Province the days of the sittings of the courts, and the return writs, are also well known in each County.—But take the learned gentleman's plan—I select an example, at Truro, on the day after the court rises at Pictou, the Sheriff is commanded to have the body of a prisoner, or a party is summoned to appear—on what day says the prisoner, shall bail be given for my appearance, this is provided for says the learned gentleman, one part of my resolution authorizes the court, at one of its terms in Halifax, to circulate the return days. Thus the Judges are to become almanack makers—and those days are to be published in the Gazette and other newspapers. Here is work for printers! Every man who intends to bring an action, or expects to be arrested must carry a newspaper in his pocket to find out the return day. *Id certum est quod certum reddi potest*, says the learned gentleman—but if the newspapers disagree as much in this as in other matters, no two of them would agree as to the days; add to this the Sessions and Grand Jury dangle about the door of the Supreme Court during its Sessions, and you have a precious medley. So long ago as the year 1789, this branch of the Legislature, composed of men who had been educated in other countries, and who well knew the value of legal institutions—men who, I hesitate not to say, were equal at least to any who have succeeded them—to any who arose out of the dark age that followed them—before institutions of learning were established in this Province—at a time when the population was about 40,000 the revenue £8000, and the debt £13,000; they made permanent the salaries of two assistant Judges, at a salary of £400 a year, which in Old Halifax Currency, is better than £800 is now, with the Chief Justice who was paid from home—and what were their labors? The four terms at Halifax, and one circuit at Windsor, Horton, Annapolis, and afterwards into Cumberland. The whole eastern country, with its tens of thousands of inhabitants, was a wilderness; and here permit me to say that, with the age of a country, legal difficulties arise which were not known in the early stages of it. Every man in these days was either the immediate tenant of the crown, or held but by one remove from it. What is the case now? By conveyances innumerable, by devise, by operations of law, and by inheritance to intestate estates, thousands of difficulties and complex cases arise, unknown in former times. The training of a Judge is different from what it was in former times the legal researches of the Bar, drive the Judges to examine into decisions and principles, to be enabled to satisfy their own minds as well as those of the profession. Sir, independent of the Statute and Common Law of a Country, there is another code, as I may call it, that is the decision of Courts, which, in settling particular cases, have laid the foundation of general rule and the uniformity of decision, is important in all cases similarly situated. Let us now consider the state of this province, and