

SESSIONAL PAPER No. 18

them ; they Cannot Reconcile themselves to have their Property determined by Men of that Station of Life of which Juries must be Composed, the Idea of Twelve Men being necessarily of one Opinion before a Judgment Can be Obtained, revolts their understanding. An Innovation of that kind would have Many Inconveniencies.—There are Many Foreign Troops in the Province and there are not wanting ill disposed persons who would Stir up vexatious Lawsuits against them in Damages for imaginary Injuries if there was a Mode of Trial that Could Submit a German Baron to a Decision of Twelve Tavern keepers or Traders and that with the Sole View of Disgusting him with Our Service

It was with great Regret that I found MySelf Obliged not to Communicate the Instruction relative to the Security of Personal Liberty.¹—The Citizens in no Country ought to be liable to Long Imprisonments, Persons accused of Crime ought Certainly to be brought in a Limited Time to Trial, but in Time of War and Rebellion, it would be impolitic and in the present circumstances of the Province, highly dangerous to attempt an Innovation of the Kind.—I have been under the disagreeable Necessity of imprisoning Several Persons² for corresponding with Rebels or assisting them to Escape and have great Reason to Suspect Many More of being Guilty of the Same practices, but have made it a Rule to pretend Ignorance as often as I can, and am Satisfied with guarding against Bad Consequences of their Treachery except where their crime is publicly known, and then I think it my Duty to take Notice of them, as a Contrary Conduct would betray weakness & encourage Others to follow their Example.—This was the Case with Mr. Charles Hay of Quebec & Mr. Cazeau of Montreal. The Clerk of the former was detected & apprehended last March as he was Setting off for Albany.—He had a Certificate from Charles Hay whose Brother is a Quarter Master General in the Rebel Army, desiring Credit to be put in him.—The Clerk had confessed before a Magistrate that his Master Sent him and that Mr. Cazeau procured him a Guide.—The first applied by Petition to the Court of King's Bench at the last Sessions last May for the District of Quebec praying a Writ of Habeas Corpus. The Petition was rejected by the Unanimous Opinion of the Commissioners for executing the Office of Chief Justice,³ who by that means and a Public Declaration which they made in 1779 at the Trial of Mr. Stiles of the Viper on an Indictment for Murder, of the King's having a legal Right to Impress Mariners of the Navy in time of War, have very much Strengthened the hands of Government.—The Province is Surrounded by Enemies from without and as happens in all Civil Wars is infested with Spies & Secret

¹ The 13th article of the Instructions referring to the writ of Habeas Corpus. See p. 600.

² Referring to the ultimate outcome of a number of these imprisonments, we find the following statement, "Several actions for damages for false imprisonment, were instituted against him in England; the persons who had been imprisoned, recovered judgments against him, which were paid by Government." *History of Canada; from its First Discovery to the Year 1791.* By William Smith. Quebec: 1815. Vol. II, p. 165.

³ When Carleton dismissed Peter Livius from the position of Chief Justice, he re-appointed Messrs. Mabane, Dunn, and Williams a Special Commission to execute the office of Chief Justice, as had been done during the absence of Hey. See B 37, p. 196.