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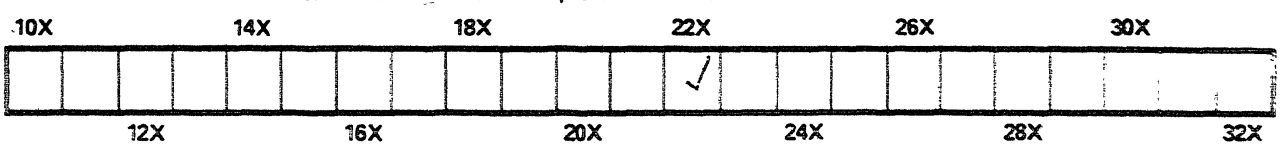

PROCEEDINGS

IN THE

ASSEMBLY

OF

LOWER CANADA

ON THE

RULES OF PRACTICE

OF THE COURTS OF JUSTICE,

AND THE

IMPEACHMENTS

OF

JONATHAN SEWELL

AND

JAMES MONK, Esquires.

PRINTED BY ORDER OF THE HOUSE.

1814.

HOUSE OF ASSEMBLY,

Friday, 14th January, 1814.

RESOLVED, That this House will, on the twenty-second inſtant, reſolve itſelf into a Committee of the whole House, to take into conſideration the power and authority exerciſed by His Majeſty's Courts of Juſtice in this Province, under the denomination of Rules of Practice.

The House, pursuant to the foregoing Resolution, resolved into Committee on different days, and on Tuesday the first February, Mr. *Dénéchau*, the Chairman, reported, that the Committee had come to several Resolutions, which he was directed to submit to the House, whenever it shall be pleased to receive the same and it was,

ORDERED, That the Report be received to-morrow.

Wednesday, 2d February, 1814.

MR. *Dénéchau*, from the Committee of the whole House, to whom it was referred to consider the powers and authorities exercised by the Courts of Juſtice in this Province, under the denomination of Rules of Practice, reported, according to order, the Reſolutions of the Committee: And he read the Report in his place, and afterwards delivered it in at the Table, where the Resolutions were again read by the Clerk, and are as followeth, *viz*:

RESOLVED, that it is the opinion of this Committee, that the Legislative power in this Province is exclusively vested in His Majesty and in the Legiſlative Council and Assembly, to whom only, in the said Province, it belongs to make laws for the welfare and good Government of the said Province.

2 That the Laws, usages and customs of Canada, secured and confirmed to the inhabitants of this Province by the act of the Parliament of Great Britain in that behalf made, can in no respect be altered,

altered, changed or modified, except by the authority of the Legislature of this province.

3. That the power and authority of His Majesty's Courts of Justice in this province are purely judicial, and that no alteration of the said Laws can be made by the Judges of the said courts, without the most criminal breach of their duty, and a violation of their oaths of office.

4. That by certain regulations under the name of "*Rules and orders of Practice*," made by the Courts of Appeals of this province on the 19th day of January 1809, and still in force, the said Court of Appeals, of which *Jonathan Sewell*, Esq. Chief Justice of this Province, was and still is president, hath excercised a Legislative authority, and established rules, affecting the civil rights of His Majesty's subjects, contrary to and subversive of the laws of this province.

5. That His Majesty's Court of King's Bench for the District of Quebec, in which *Jonathan Sewell*, Esq. as Chief Justice of this Province, presides, by certain regulations under the name of "*Rules and orders of Practice*," made in the term of October, 1809, and still in force, hath exercised a Legislative authority and established rules affecting the civil rights of His Majesty's subjects, contrary to and subversive of the Laws of this Province.

6. That His Majesty's Court of King's Bench for the District of Montreal, of which *James Monk, Esq.* is Chief Justice, by certain regulations under the name of "*Rules and orders of Practice*," made and published in the term of February 1811, and at subsequent times, and still in force, hath exercised a Legislative authority and established rules affecting the civil rights of His Majesty's subjects, contrary to, and subversive of the Laws of this Province.

7. That an arbitrary and unconstitutional authority hath, by the said Regulations of the said Courts, been exercised in respect of the Attornies and Officers of the said Courts, by declaring them guilty of the crime of "Contempt" in certain cases, to which the said Courts have in their discretion thought fit to apply that crime; and

and by ſubjecting them to ſevere proſecutions and penalties, to which they were not liable by the law of the land.

8. That by the ſaid Regulations, His Majeſty's Subjects are, in certain caſes, unjuſtly and illegally debarred from the proſecution and defence of their rights in the ſaid Courts, unleſs they previously make depoſits of money, not required by law to be made, whereby the benefit of the Laws and the adminiſtration of Juſtice are denied to His Majeſty's Subjects, except on conditions preſcribed by the ſaid Courts, with which many of them may be unable to comply.

9. That by the ſaid Regulations, rules of preſcription contrary to law, and deſtructive of the juſt and legal rights of His Majeſty's Subjects, are in certain caſes eſtabliſhed.

10. That the ſaid Courts, by the ſaid Regulations, have attributed to themſelves an extraordinary and unprecedented authority of making ſpontaneous and unſolicited determinations in a cauſe, which are ſtiled "Orders and Judgments *ex officio*," whereby juſtice is refuſed to both parties in a cauſe, and the ſaid Courts blend and confound the offices of party and Judge in the ſame perſons.

11. That the powers aſſumed by the ſaid Courts are inconſiſtent with, and ſubverſive of the Conſtitution of this Province; are calculated to deprive His Majeſty's Canadian Subjects of their Laws; muſt render the enjoyment of liberty and property altogether inſecure and precarious, and give to the Judges an arbitrary authority over the perſons and property of His Majeſty's ſubjects in this Province.

ORDERED: That the queſtion of concurrence be put on the ſaid Reſolutions.

And then the Houſe adjourned.

Friday, 4th February, 1814.

THE Houſe proceeded to take into conſideration the order of the ſecond inſtant, for putting the queſtion of concurrence on the Reſolutions

Reſolutions of the Committee of the whole Houſe, to whom it was referred to take into conſideration the powers and authorities exerciſed by the Courts of Juſtice in this Province, under the denomination of Rules of Practice.

And the ſaid Reſolutions being debated, were carried in the affirmative, *viz:*

The three firſt unanimouſly.

The fourth, Yeas 16—Nays 2.

The fifth and ſixth, Yeas 16—Nays 5.

The ſeventh to the tenth, incluſive, Yeas 19—Nays 5.

The eleventh, Yeas 17—Nays 5.

And it was

RESOLVED, That this Houſe doth concur with the Committee, in the ſaid Reſolutions.

RESOLVED, that a Committee of ſeven Members be appointed to examine particularly the Rules of Practice of the Courts of Juſtice in this Province, and report in detail on the principal points wherein they are contrary and repugnant to the Laws of the Land, and to enquire into any circumſtances that may appear to them material, relatively to the ſaid Rules of Practice, and the Practice of the ſaid Courts, and that the ſaid Committee do alſo report their opinion as to the courſe which it is expedient to purſue for vindicating the Authority of the Legiſlature, and repreſſing ſuch abuſes of Judicial Power; and that the ſaid Committee be empowered to ſend for perſons, records, and papers.

ORDERED, that Mr. *Stuart*, Mr. *Borgia*, Mr. *Papineau*, Mr. *Lee*, Mr. *Bourdages*, Mr. *Blanchet*, and Mr. *Joſeph Bedard*, do compoſe the ſaid Committee.

Wednesday,

Wednesday, 16th February, 1814.

MR. *Stuart* from the Committee appointed to examine particularly the Rules of Practice of the Courts of Juſtice in this Province, and report in detail on the principal points wherein they are contrary and repugnant to the Laws of the Land, and to enquire into any circumſtances that may appear to them material, relative to the ſaid Rules of Practice, and the Practice of the said Courts; and alſo to report their opinion, as to the courſe which it is expedient to purſue for vindicating the authority of the Legiſlature, and repreſſing ſuch abuſes of Judicial Power; reported, that the Committee had framed a Report accordingly, which he was directed to ſubmit to the Houſe, whenever it ſhall be pleaſed to receive the ſame.

And he read the Report in his place, and afterwards delivered it in at the table, where it was again read once throughout by the Clerk, and is as followeth, *viz.*

COMMITTEE

COMMITTEE ROOM, 15th FEBRUARY, 1814.

Report of a Committee appointed to examine particularly the Rules of Practice of the Courts of Justice in this Province, and report in detail on the principal points wherein they are contrary or repugnant to the Laws of the Land, and to enquire into any circumstances that may appear to them material relatively to the said Rules of Practice, and the Practice of the said Courts, and also to report their opinion as to the course which it is expedient to pursue for vindicating the Authority of the Legislature, and repressing such abuses of Judicial Power.

YOUR Committee, impressed with a sense of the great importance of the subjects referred, have given them the most deliberate consideration, and beg leave now to submit their Report in obedience to the Order of this House. Your Committee have in the first instance directed their attention to the Rules of Practice of the Provincial Court of Appeals —In the preamble to these Rules, certain clauses of Laws are recited apparently as the authority in virtue of which the Rules have been made. These are the 6th Par. Prov. Ord. 27 Geo. III. c. 4. and the 16th Sec. of the Prov. Stat. 41st Geo. III. c. 7. By the former it is declared "That the Provincial Court "of Appeals shall have authority to make Rules and Orders to regu- "late, effectuate, and accelerate the proceedings in all causes of "Appeal for the advancement of Justice, and to prevent unnecessary "delays and expence in the same;" and by the latter it is declared, "That the different Courts of Civil Judicature in this Province shall "have power and authority to make and establish Rules and Orders "of Practice in the said Courts, in all Civil matters, touching all

"services

" services of Process, execution, and Returns of all Writs, proceed-
" dings for bringing causes to issue, as well in Term time as out of
" Term, and other matters of regulation within the said Courts."

It appears to Your Committee, that the Courts of Canada under the French Government, prior to the Conquest, neither possessed, claimed, nor exercised the power of making Rules to direct and govern their Practice, adequate provisions for that purpose having been made by the Common Law of France, and the Ordinances of the French King, to which those Courts were bound to yield an implicit obedience. The alterations made in the Judicature of the Country, and the English Forms of Judicial proceedings introduced subsequently to the Conquest, having made many of the Regulations of the French Law inapplicable, some Rules became necessary to settle points of Practice not regulated by any existing Law. To Sanction the power of supplying such deficiencies in matters of mere practice, by occasional Rules, appears to have been the motive for the enactment of the clauses above recited. And by those Clauses, it is the opinion of your Committee that the Legislature has recognized in the Courts to which they respectively refer the power of regulating, by Rules not contravening any known Law of the Land, the matters of Practice specified in them. This limited power appears to Your Committee to have been exercised by the Courts, without exciting complaint or alarm till the making of the Rules of Practice of the Provincial Court of Appeals on the 19th January 1809, when that Court thought proper to take a much wider range for its regulations, and set an example of encroachment on the Legislative Authority which has been two successfully imitated by the Courts of original Jurisdiction. Your Committee will here notice the most material of the regulations by which, in their opinion, the Court of Appeals has exercised Legislative Authority.

By the Common Law of Canada, a party aggrieved by a judgment final or interlocutory had a right to appeal from it as a matter of course. This right in respect of a final Judgement is recognized by the Provincial Ordinance 25th Geo. III. c. 2. s. 24, which directs " that the
" party meaning to Appeal from any definitive Sentence or Judgement
" of any of the Courts &c. shall sue out a Writ from the Court of
" Appeals,

" Appeals, tested and signed by the Governor, Lieutenant Governor " or Chief Justice, stating that the Appellant complains of being " aggrieved by the Judgement, and therefore commanding the Judges " of the Inferior Court, or any two of them to send up the original " papers and proceedings &c. and the Writ, it is declared, shall be " allowed by any Judge of the Inferior Court, after the requisite se- " curity has been given." The right of Appeal from an interlocutory Judgement is permitted by this Ordinance only in certain cases, and after an Order of the Court of Appeals granting an Appeal has, on motion of the party in that behalf, been made; but such motion may, by Law, be made at any stage of the proceedings before final Judgement Restraints and Restrictions have by those Rules of Practice been laid on the legal right of Appeal from Judgments both final and interlocutory By the 8th Section of the said Rules, it is declared " That no Writ of Appeal from any interlocutory or definitive Judge- " ment given in the Court of King's Bench for the District of Mon- " treal, or in the Court of King's Bench for the District of Three- " Rivers shall issue in any suit until the party Appellant in such Suit " shall have deposited in the hands of the Clerk of this Court, the " Sum of four pounds, to defray the postage of the record in such Suit, " and the overplus, if any there be, shall by the Clerk of this Court " be paid to such Appellant on demand," And, by the 30th Section of the same Rules, it is declared " That no motion for an Appeal from " an interlocutory Judgment shall be made or received at any time " whatever after the first Day of the Term of this Court next after " the day of the date of such interlocutory Judgment, the April Term " of the Court excepted, during which any such motion shall be recei- " ved until the sixth day of the Term inclusive."

Your Committee respectfully submit their opinion, that these Regulations are not only contrary to Law, but imply the assumption of a power by which at the pleasure of the Judges the whole system of the Laws might be rendered a dead letter and incapable of conferring the benefits it was intended should be derived from them. By the first the right of appeal is denied except on a condition prescribed by the Court, and it is obvious that if the Court could make the deposit of a sum of money a condition precedent to the right of instituting an appeal, they could impose any other conditions they might

 think

think fit to the exercise of that right, and so shackle it as to render it unavailing. The requiring of a larger deposit would alone shut the door of justice to many persons aggrieved by unjust judgments, and the power of indefinitely increasing the amount of the deposit, which is implied in the discretionary power assumed by the Court, might be so exercised as to exclude all persons whatever from the benefit of an appeal. It is evident also, that this power, if admitted to bar a right of appeal, might be applied to bar any other legal right, as for instance the right of instituting or defending an action, and the King's subjects be thus excluded from the exercise of legal remedies for wrongs done to them, and debarred from making their defence against unjust demands. Your Committee will have occasion to shew that the Courts of original jurisdiction have realized these evils by depriving parties in certain cases of the right of prosecuting or defending their rights, unless they comply with similar conditions.

By the second of the said Regulations, your Committee are of opinion, that a rule of the nature of a law of prescription has been established, whereby the King's subjects are deprived of the benefit of an appeal from an interlocutory judgment unless they exercise the right of appeal within the time prescribed by the Court, and may thus incur great loss and injury When your Committee consider that nothing short of the supreme power of the country can bar or extinguish a legal right of the meanest of the King's subjects, they must both feel and express alarm at a rule, by which a Court of Justice arrogates to itself the power of prescribing and barring a right common to all.

By the Provincial Statute 34 Geo. III. c 6. commonly called the Judicature Act, the Courts thereby established are made competent to exercise their judicial powers in certain Terms or defined spaces of time, and four such Terms in the year are allotted to the Court of Appeals. All Writs of Appeal, before the making of these Rules, were, and as your Committee believe ought to be, made returnable on some juridical day in one of these Terms, in order that the Respondent may have a day in Court to appear and answer to the demands of the Appellant. But an innovation in this respect has been made by the 9th Section of the said Rules, whereby it is ordered " That every Writ of

" Appeal

" Appeal as well from an interlocutory as from a definitive judgment, " to be hereafter iſſued, ſhall be teſted upon the date on which the ſame " ſhall iſſue, and every ſuch writ ſhall be returnable in fifteen days from " the day of the teſte thereof." Your Committee are of opinion that this Rule, in ſo far as it makes a Writ of Appeal returnable out of Term, is illegal.

By the 10th Section of the ſaid Rules, it is declared, " That every " Prothonotary who, without lawful cauſe, ſhall refuſe or neglect to " make return of any Writ of Appeal, which ſhall be iſſued in any " Suit, and by him be received within the period thereby allowed for " the return thereof, ſhall be deemed and taken to be guilty of a con- " tempt of this Court."

Your Committee beg leave to ſubmit, that the power of puniſhing for contempts as exerciſed by the Courts in England, was not known in the law of this Country as it ſtood at the time of the conqueſt. To what extent that power may have been introduced by the Criminal Law of England, in force in this Province, it is not neceſſary to enquire. For admitting that the power of puniſhing for Contempts, as regulated by the Criminal Law of England has, in this Province, been derived from that law, it can only belong to the Courts of Criminal Juriſdiction, and from it, your Committee apprehend, no right can be inferred in any Court to determine what in future ſhall conſtitute the crime of " Contempt," the power to do ſo belonging excluſively to the Legiſlature. And your Committee are therefore of opinion, that the ſaid laſt mentioned Rule is arbitrary and illegal. They take the liberty of adding alſo, that by this Rule, the crime of Contempt is fixed on the Prothonotary for the non-fulfilment of a duty (the making of a Return to a Writ of Appeal) which is not by law impoſed on him, but on the Judges to whom the Writ is addreſſed, and from whom the Court of Appeals has a right to enforce the making of a Return.

By the 13th Section it is declared, " That perſonal ſervice of any " Writ of Appeal upon the Attorney who has appeared in the Court " below for the Reſpondent or Reſpondents, or in default of ſuch ſer- " vice upon the Reſpondent or Reſpondents, at his, her or their do- " micile,

" micile, or in default of ſuch domicile, upon the Attorney *ad negotia*, " upon record in ſuch ſuit, ſhall be held and taken to be a good and " ſufficient ſervice of ſuch Writ, with reſpect to ſuch Reſpondent or " Reſpondents ſo ſerved in ſuch caſes reſpectively."

The Power of an Attorney *ad litem*, is by law determined when final Judgment has been rendered in the cauſe, in which he has been retained, and as he then ceaſes to repreſent his Client, no ſervice on him afterwards, can be, or is by law binding on his Client; yet by this Rule the ſervice of the proceſs of another Court on the perſon who has ceaſed to be Attorney, is contrary to law, declared legal and binding on his former Client. By this Rule, alſo, the ſervice of the Writ on an Attorney *ad negotia* is, contrary to law, declared legal. The law of Canada has preſcribed the modes in which proceſs in different caſes ſhall be ſerved, among which thoſe laſt mentioned required by the Court are not to be found. Your Committee are, therefore, of opinion, that this Rule is contrary to law, and in making it, the Court of Appeals aſſumed to itſelf legiſlative authority.

By the Provincial Ordinance, 25th Geo. III. chap. 2. Sec. 15, 16, and 17, the mode of compelling the fyling of Reaſons of Appeal and Anſwers to them, and the delays within which they are to be fyled, are preſcribed. The Appellant is enjoined to fyle his Reasons within eight days after the return of the Writ, and if he do not, the Reſpondent may obtain an order on him to fyle them in four days, and if this order be not complied with, the Appeal is to be diſmiſſed with coſts. The reſpondent is enjoined to fyle his anſwers within eight days after the fyling of the Reaſons of Appeal, and, if he neglects to do ſo, the Appellant may obtain a Rule, that unleſs he fyle them within four days, he ſhall be precluded from fyling them after that period.

The 16th, 17th, 18th and 19th Sections of the ſaid Rules of Practice, are in direct contradiction to the ſaid law, in the following points:

1ſt. They ſubſtitute Notices by the Attornies of the Parties reſpectively, inſtead of the Rules or Orders of the Court required by the

ſaid

ſaid Ordinance, and make the ſame penal conſequences attach to a non-compliance with the ſaid Notices as with the ſaid Rules or Orders.

2dly. They allow only four days inſtead of eight allowed by law, for fyling Anſwers, after the Reaſons of Appeal have been fyled.

3dly. They allow a delay of *two* days only, inſtead of *four*, for fyling Anſwers after they are demanded.

4th. Although no perſon, except the Reſpondent, is intereſted in demanding, nor can by law demand the fyling of Reaſons of Appeal, and although by the ſaid Ordinance the Appellant is not bound to fyle his Reaſons of Appeal till after he is required to do ſo by a Rule or Order of Court on motion of the Reſpondent, and although it be altogether inconſiſtent with the Judicial Functions, that a Court ſhould make an Order in a Cauſe injurious to one party and beneficial to the other, except where ſuch order is demanded by one of the Parties, and authoriſed by law; yet by the 17th Section of the ſaid Rules, it is declared, "That every Suit and Appeal in which the Reaſons of Appeal ſhall not be fyled within one Calendar Month from the day of the Return of the Writ of Appeal iſſued in ſuch Suit, ſhall be deemed and taken to be deſerted by the Appellant or Appellants in such Suit ſo neglecting to fyle ſuch Reaſons of Appeal, and thereupon diſmiſſed with coſts accordingly, upon the firſt (or any ſubſequent day) in Term thereafter, upon motion for that purpoſe, upon the part of the Reſpondent or Reſpondents, or either of them, or by the Court *ex officio* without ſuch motion, as may happen."

5thly. Although no perſon except the Appellant is intereſted in demanding, nor can by law demand, the fyling of Answers to the Reaſons of Appeal, and although by the ſaid Ordinance, the ſaid Reſpondent is not bound to fyle his Anſwers till after he is required to do ſo, by a Rule or Order of Court, on motion of the Appellant, and altho' the making of Orders in a Cauſe not demanded or authoriſed by law, is as above ſtated, inconſiſtent with the duties of a Judge, yet, by the ſaid 19th Section of the ſaid Rules, it is declared, "That every Suit in which the Anſwers to the Reaſons of Appeal ſhall not be fyled within Ten Days from the day on which the Reaſons of Appeal in ſuch Suit ſhall be fyled, ſhall be deemed and taken to be deſerted by

"the

" the Reſpondent and Reſpondents in ſuch Suit ſo neglecting to fyle " ſuch Anſwers, and ſuch Reſpondent and Reſpondents wholly pre- " cluded from fyling Anſwers to ſuch Reaſons of Appeal, and there- " upon this Court will proceed to hear the matter of ſuch Suit, and the " Appeal therein depending *ex parte* on the part of the Appellant, " only, and proceed to Judgment therein, without the intervention " of ſuch Reſpondent."

Your Committee are therefore of opinion, that the ſaid 16th, 17th, 18th and 19th Sections of the ſaid Rules are illegal, and that the Court of Appeals in framing them, hath exereiſed Legiſlative authority.

By the 21ſt Section of the ſaid Rules, the Appellant and Reſpondent are required to fyle Caſes within Ten Days after the fyling of the Reaſons of Appeal, and if the Appellant do not fyle his Caſes within that time, it is declared, that his Appeal " ſhall be deemed and taken " to be deſerted by ſuch Appellant, and thereupon diſmiſſed according- " ly, upon the firſt, or any ſubſequent day in Term thereafter, upon " motion for that purpoſe on the part of the Reſpondent or Reſpond- " ents in ſuch Suit and Appeal or either of them, or by the Court " *ex officio*," without ſuch motior as may happen, &c. and each Suit " and Appeal in which the Appellant ſhall have ſo fyled his Caſes, " and in which the Reſpondent ſhall not have ſo fyled his Caſes, ſhall " be deemed and taken to be deſerted by ſuch Reſpondent, and the Ap- " lant heard therein *ex parte*, without the intervention of the Reſpon- " dent, his Counſel or Attorney, and ſuch Order and Decree thereup- " made, as to Law and Juſtice ſhall appertain," &c.

The fyling of Caſes is not required by law, but being deſignedto facilitate the right underſtanding of a Cauſe, and ſupport the reſpective intereſts of the Parties, the omiſſion of either Party to fyle them, it would appear, would perhaps be ſufficiently puniſhed by the diſadvantage to which ſuch party would thereby expoſe himſelf at the hearing of the Cauſe. By this Rule, in the opinion of your Committee, penal conſequences, unreaſonable, unjuſt and illegal, are attached to an omiſſion to fyle Caſes, within the limitation which is fixed, and your Committee are again called upon to notice in this Rule, the exerciſe of

an

an authority *ex officio*, by which this Court in its diſcretion and *ex mero motu* deprives parties of their legal rights.

By the 27th Section of the Provincial Ordinance above cited, it is enacted that "when the reaſons of Appeal and the Anſwers thereto "are fyled, the Court ſhall, on the application of either of the Par-"ties, fix on ſuch convenient day for the hearing of the Cauſe, as to "it may ſeem proper."

In contradiction to this Law, and as your Committee conceive, by the aſſumption of an authority at once illegal and inconſiſtent with the powers and duties of Judges, it is declared by the 24th ſection of the ſaid Rules, "That all Suits and Appeals which ſhall not be ſet down "for hearing upon the motion of the Appellant or of the Reſpondent "in each Suit and Appeal reſpectively, on or before the laſt day of the "Term next after the day upon which the Reaſons of Appeal in ſuch "Suit and Appeal ſhall be fyled, ſhall forthwith by the Clerk of this "Court be inſcribed on the Roll for hearing in ſucceſſion, according to "the days upon which the Reaſons of Appeal in each Suit and Appeal "reſpectively, ſhall be fyled, and ſuch Suits and Appeals ſo inſcribed, "and each of them, ſhall thenceforth be and remain ſet down for hear-"ing until heard or otherwiſe diſpoſed of, and if not otherwiſe diſpoſed "of, ſhall be called on and come on to be heard upon the firſt and ſub-"ſequent days of the then next enſuing Term and Terms in the order "in which they ſhall be ſo inſcribed, and no Suit or Appeal ſo inſcribed "upon the Roll for hearing, ſhall be taken therefrom, nor ſhall the "hearing thereof be put off without a ſpecial application to the Court "upon ſome extraordinary and ſufficient ground, to be authenticated by "affidavit after two days notice to the adverſe party, and due proof of "the ſervice of ſuch notice;" and by the 26th ſection of the ſaid Rules, it is further declared, "That every Suit and Appeal fixed for hearing, "in which (ſuch Suit being called on) the Appellant and Reſpondent "do not appear, or are not ready to proceed, ſhall be diſmiſſed, without "coſts to either party."

Your Committee are of opinion, that the ſaid 24th and 26th ſections of the ſaid Rules, are arbitrary and illegal, and are deſigned to veſt in the Court of Appeals a power altogether inconſiſtent with its judicial

duties, which would frequently render the decisions of the Court in the cases provided for in those sections, partial and oppressive, and enable the Court, at its pleasure, to administer or deny justice to the King's subjects.

Your Committee have thus pointed out the principal regulations in the "Rules and Orders" of the Court of Appeals, which appear to them contrary and repugnant to the Law of the land; they beg leave now to proceed to submit respectfully their opinions on the "Rules and "Orders of Practice" of the Court of King's Bench for the District of Quebec.

The power assumed by the Court of Appeals of declaring authoritatively what in future shall constitute the crime of Contempt we find exercised by the Court of King's Bench, in the first pages of its Rules. The law of Canada had sufficiently provided for the payment of Fees due to the Officers of Courts. But the Judges at Quebec have thought proper to add a penal sanction to the Civil obligation, in virtue of which the payment of fees might legally be enforced, by declaring, "that "within one calendar month next after the last day of each Term res- "pectively, every Barrister and every Attorney, &c. shall discharge "and pay unto the several Officers of this Court, all legal fees whate- "ver in which such Barrister and Attorney, respectively shall then be "justly indebted and in arrear, to the Officers of this Court," and, after prescribing a certain form in which complaint is to be made against a Barrister or Attorney so indebted, it is further declared, "that if such "fees so due and unpaid shall not by such Barrister or Attorney be "paid or otherwise satisfied unto the Officer or Officers making such "complaint as aforesaid, on or before the Sixth day of the Term in "which such complaint shall be so delivered to such Justice, and if "proof of such continued neglect or refusal to pay or otherwise satisfy "such fees shall then also be made by the affidavit of such Officer or "or Officers, or otherwise to the satisfaction of the Court, such com- "plaint with the several exhibits thereunto annexed, upon the Peti- "tion of such Officer or Officers for that purpose, shall be read and "fyled in open Court, and thereupon such Barrister or Attorney (if "good cause to the contrary be not shewn instanter by or on behalf

"of

" of such Barrester or Attorney) shall be held and taken and be ad-
" judged to be guilty of a wilful breach of this Rule, in contempt
" of the Court, and thereafter no motion shall be made or received in
" in any Cause whatever, by or from such Barrister or Attorney, or
" by or from any other Barrister or Attorney on his behalf, unless such
" fees so due and unpaid shall be wholly discharged and paid, or other-
" wise satisfied unto the Officer or Officers making such complaint, &c.

Your Committee are of opinion, that this Rule is not only illegal, arbitrary and unjust in the extreme, but attributes to the Court a power, which might become an engine of oppression of particular individuals at the Bar, and is calculated to degrade the profession and expose its members to arbitrary punishment.

The disposition of the Court of King's Bench, indeed, to array itself in terrors, is strongly evinced by a a subsequent Rule, by which it is declared, " that every wilful and unlawful breach of an Order or Rule
" of Practice of this Court (for which no fine or other specific punish-
" ment is provided in the body of such other Rule) shall be taken and
" and considered to be a Contempt of Court in the person or persons
" guilty of such breach as aforesaid, and punished accordingly."

What breach of a Rule or Order of Court may or may not constitute a Contempt, your Committee apprehend, is a matter of Law fit to be determined judicially by the Court in each particular case, after the breach has been committed; but the Court, in the opinion of your Committee, has no power to declare prospectively that any breach, when it does occur, shall constitute a Contempt. The sweeping enactment of the crime of contempt contained in this Rule, your Committee deem alarming in the highest degree, as it is impossible to foresee to what excesses of injustice and oppression it might not be applied by a Court which concentrates in itself the power of Legislator, Jury and Judge in proceedings in which it is also Party. The general power also which seems to be ascribed to the Court " to provide fines and punishments" may very reasonably heighten the apprehensions the Rule is calculated to excite, and from the comprehensiveness of the expression " person or persons" used in the Rule, others than Officers of the Court are subjected to the severe penalties it inflicts. It

 would

would ſeem alſo from the generality of the expreſſions in the Rule, that a non conformity with any of its Regulations, as for inſtance, thoſe which, contrary to law, preſcribe ſet forms of words in pleadings, &c. might ſubject perſons, profeſſional and unprofeſſional, to its penalties. Your Committee cannot expreſs ſufficiently ſtrongly the ſenſe they entertain of the illegal and arbitrary exerciſe of power, in making this Rule, and of the dangerous and oppreſſive conſequences with which it is pregnant. The Court appears to your Committee to have been determined to enforce an exact compliance with illegal regulations, not only by the ſeverity of its puniſhments, but by preventing thoſe regulations from being openly canvaſſed in the cauſes in which they might come in queſtion; for by the ſucceeding Rule, it is declared, "that a "point of Practice ſettled by a Judgment of this Court, and entered "on the Prothonotary's Book of Rules ſhall not be re-argued." (Sect. 3. Art. 2.) In the ſecond Section of the ſaid Rules, (Art. 11. and 14) your Committee have remarked regulations reſpecting Attornies which appear to them illegal; and among theſe is a Rule, by which the legal mode of proceeding, when the Attorney of one of the parties in a cauſe dies is diſpenſed with, and a different mode preſcribed, and alſo a Rule, by which it is declared, "that an Attorney who ſhall appear "for any Party or Parties in any Suit in this Court, ſhall be held and "taken to be Attorney to ſuch Party or Parties in all matters and pro-"ceedings whatſoever, collateral and incidental to ſuch Suit, as well "before as after final Judgment." The Law of this Province, in the opinion of your Committee, has very clearly determined the nature, extent, and duration of the powers of an Attorney *ad litem*, and the Court of King's Bench has not only, in the opinion of your Committee, interpoſed its Regulations on the ſubject very unneceſſarily, but in doing ſo, has contravened the known law of the land.

By the law of this Province, a ſpecies of Preſcription, under the name of "*Peremption d'inſtance*" has been eſtabliſhed, whereby the diſcontinuance or ceſſation of proceedings in a cauſe during three years, renders it liable to be diſmiſſed, on application to the Court to that effect. Notwithſtanding this law, the Court of King's Bench at Quebec has declared by the ſaid Rules, (Art. 16. Sec. 3.) "That "every caſe in which on the part of the Plaintiff or Plaintiffs there "ſhall have been no proceedings for one whole Term, excluſive of the

"Term

" Term in which the laſt proceeding on the part of ſuch Plaintiff or " Plaintiffs was had, ſhall on motion of the Defendant or Defendants " therein, grounded upon the Certificate of the Prothonotary, that no " proceedings have been ſo had, be diſmiſſed, *ſauf à ſe pouvoir*, un- " leſs good cauſe to the contrary be ſhown by ſuch Plaintiff or Plain- " tiffs," and by the 19th Art. of the ſame Section, it is further declared, " that every Caſe, Suit or Action, in which there ſhall have been " no proceedings whatever for two whole Terms, excluſive of the " Term in which the laſt proceeding was had, ſhall be deemed and " taken to be deſerted by the Parties, and thereupon by the Court " *ex officio*, diſmiſſed, *ſauf à ſe pouvoir*, each Party paying his own " coſts: and to this end there ſhall be laid before the Court by the " Prothonotary upon the firſt day of every future Term, a liſt of all " Caſes, Suits or Actions now or hereafter to be depending in this " Court, which ſhall have been ſo deſerted."

Theſe Regulations are directly contrary to the law of *Peremption*, and eſtabliſh a new Rule of Preſcription, by which the Plaintiff incurs the loſs of his Cauſe, by not proceeding during one Term, if the Defendant moves to that effect; whereas by the law of the land, he can incur ſuch loſs only when his neglect to proceed has continued during *three years*, nor can his Action after the lapſe of that time be diſmiſſed, unleſs the Defendant demand the diſmiſſal of it, and any intervening ſtep in the Cauſe covers the Preſcription, whereas by the laſt of the ſaid Rules, the power of diſmiſſing it *ex officio*, after two Terms, is attributed to the Court: Your Committee are of opinion, that the ſaid Regulations are illegal, unreaſonable and arbitrary, in the higheſt degree, are moſt injurious to the rights and intereſts of his Majeſty's ſubjects, and amount to a denial of Juſtice.

By the 10th Art. of the 7th Sec. of the ſaid laſt mentioned Rules, it is ordered, " that no Plea of Exception, *Declinatoire*, *Preremptoire à la forme*, or *dilatoire*, be received or fyled, " unleſs the party offering ſuch " Plea, ſhall therewith depoſit in the hands of the Prothonotary, the " ſum of Two Pounds Six Shillings and Eight Pence for each and every " ſuch Plea, to anſwer the Coſts of the Reſpondent or Reſpondents " upon ſuch Plea, if the ſame ſhall be diſmiſſed by the Court, or with- " drawn by ſuch Party, in the proportion of Eleven Shillings and

" Eight

" Eight Pence to the Prothonotary, and One Pound Fifteen Shillings " to ſuch Reſpondent or Reſpondents."

Your Committee have already expreſſed their opinion of the illegal and dangerous precedent ſet by the Court of Appeals, in requiring the depoſit of a ſum of money to entitle a Party to the exerciſe of the legal right of appeal. In the Rule laſt cited, is to be found a moſt alarming exercile of the ſame power, by which the right of ſelf-defence is made to depend on the will of the Court, and a Plea to the Juriſdiction even of the Court, or Exception *Declinatoire*, is not permitted, except on the terms which the Court is pleaſed to preſcribe. Your Committee conſider this Rule as a moſt flagrant violation of the right of the Subject, and as being illegal and arbitrary in the extreme.

A Rule of a ſimilar deſcription, is to be found in the 4th Art of the 11th Sec. of the ſaid Rules, by which it is declared, " that the Party " who ſhall make option and choice of the Trial and Verdict of a Jury " in any Caſe, ſhall bear and pay, as well the fees payable to the ſeveral " Officers of this Court, for ſtriking, ſummoning and impannelling " ſuch Jurors as the fees payable to the Jurors, who in ſuch caſe ſhall " appear and compoſe the Jury: and to this end the Party with his mo- " tion for a *Venire Facias*, ſhall depoſit in the hands of Prothonotary " of this Court the ſum of forty ſhillings &c. and that without ſuch " deposit a motion for a Jury and *Venire facias*, or for either, ſhall " not in any case be received or fyled."

Your Committee are of opinion that the ſaid laſt mentioned Rule is illegal and arbitrary.

In these Rules your Committee have also remarked Regulations of a Legislative nature, as to the proceedings to be observed preparatory to the diſtribution of monies arising from judicial ſales, by which the old course of proceedings in ſuch cases is set aside, and a new ſyſtem introduced; a conſpicuous feature in which, is a conſtructive admiſſion of demands to any amount eſtabliſhed by the authority of the Court, whereby the neceſſity of proof to eſtabliſh them is ſuperſeded. —and these regulations your Committee are of opinion are arbitrary and illegal.

The

The occasions on which an Election of *domicile* is required and the mode in which it is to be made are determined by law, and in no instance is there any specific form in which the Election is to be made: nevertheless, by the 6th art, of the 12th section of the said Rules, the Court has assumed to itself a Legislative authority, by prescribing an Election of domicile in a case in which it was previously required by Law and by requiring for its validity, when made without the ministry of an attorney, that it shall be made in certain prescribed Words, without the adoption of which, Individuals are not permitted to prosecute the recovery of their rights.

By law also there is no prescribed form for an opposition *afin de conserver*, it is sufficient that it contain the legal grounds necessary for its validity, and no evidence of the facts on which it is founded need be produced or fyled at the time it is made: nevertheless the Court by the 7th and 9th articles of the 12th section of the said Rules not only prescribes a set form in which such opposition must be made, the slightest deviation from which would render the opposition null and void, but also requires for its validity the exhibition of written evidence or the depositions of witnesses, or an affidavit of the party, (the taking of which is not authorised by Law) to prove the truth of its contents. The said Rules are in the words following. "That any opposition made without the minis-
" try of an Attorney of this Court, which shall not contain an Election
" of a *domicile* on the part of the *opposant* at some House within the
" Limits of the City of Quebec under the signature or signatures of the
" person or persons by whom such opposition shall be made, shall not
" be received or filed; which Election shall be in the form prescribed
" in the Appendix to these Rules and orders, under the number 78,
" and all pleadings, Notice, Rules, Judgments and other proceeding
" which pending such opposition shall thereto relate and be served at
" the Domicile thereby Elected shall be held and taken to be well
" and sufficiently served upon the person or persons by whom such
" Domicile shall be so Elected " 12th Sect. Art. 6." That every op-
" position *afin de conserver* shall be in the form prescribed in the Ap-
" pendix to these rules and orders under the number 79. and that an
" opposition, *afin de conserver*, in any other form shall not be received
" or fyled." (Sect. 12. Art. 7.)

" That

" That with every opposition *afin de conserver* shall be filed all *preu-*
" *ves litterales* to be adduced in support thereof, and the deposition of
" all witnesses, whose testimony may be necessary for the support of
" such opposition, and may legally be received in proof thereof, and in
" default of such deposition an affidavit of the party, by whom such
" opposition shall be made, in the form prescribed in the appendix to
" these rules and orders under the number 80, duly sworn before one
" of the Justices of this Court or some Commissioner duly authorised to
" take and make affidavits to be read and used in this Court; and that
" to every opposition shall be annexed, a list of all exhibits, thereby re-
" quired and therewith syled, under the signature of the Attorney *ad*
" *litem*, or other person, or persons by whom such opposition shall be
" made."

Your Committee are of opinion that the said last mentioned Rules, are repugnant and contrary to Law, are arbitrary and imply the assumption of Legislative power, and impose unreasonable and unjust restraints upon his Majesty's subjects in the exercise of their legal rights.

Your Committee have already noticed instances in which the Court has exercised the power of prescribing the Language to be used by parties who require justice at its hands, but there are many other instances of a similar exercise of power, and indeed a considerable part of the Rules consists of Regulations by which a set form of words is prescribed for pleadings, notices, motions and the most trivial papers that proceed from the hands of an Attorney. Such is the minuteness to which the Court has descended in this particular, that the words, letters, and figures, of which a common appearance is to be composed, are authoritatively prescribed, and no equivalents are permitted. These forms, for the most part, contain nothing of the substantial part of pleading, being composed of scraps for the intituling of papers, the beginnings and conclusions of them. And it has been a matter of surprise to your Committee that the Court could have deemed it consistent with its dignity, or its more important avocations, to engage in the task of framing formulæ so insignificant and useless.

If these forms had been merely recommended to the use of the profession, no injury would have arisen to the public, and your Committee would

would not have demed it neceſſary to notice them, but the greateſt importance is to be attached to them when it is considered, that a verbal and perhaps even literal conformity with them is by these Rules made neceſſary for the attainment of Juſtice, and the moſt important rights may be rendered unavailing and loſt by a deviation from them.

Your Committee, without appreciating the merits or demerits of the forms in general, are bound to expreſs their opinion of the authority which has been exerciſed in preſcribing them.—No ſyſtem of Laws requires leſs technical form than the laws of this Province, and in no inſtance are ſpecific forms required or neceſſary in Judicial proceedings; it is ſufficient that the pleadings and papers that are exhibited contain the facts or matter neceſſary to entitle the Party to what he demands; nothing beyond this is required. Your Committee are therefore of opinion, that all the regulations in the ſaid Rules, whereby ſpecific forms are preſcribed to parties in a cauſe, or their Attornies, are illegal and arbitrary, are highly prejudicial to the intereſts of his Majeſty's Subjects, and calculated to defeat, in many caſes, their juſt and legal rights.

In proceeding to examine the Rules of the Court of King's Bench for the Diſtrict of Montreal, your Committee will, in the firſt place, notice generally, without entering into detail, various illegal Regulations, highly injurious to the Rights of his Majeſty's Subjects, which have evidently been copied from the Rules of the Court of King's Bench at Quebec, upon which your Committee have already ſubmitted their opinion, and they will afterwards point out the Rules p culiar to the Court at Montreal, on which it is their duty to report their opinion.

The inſtances of Regulations ſimilar to thoſe at Quebec, are the following:

1ſt. The Court at Montreal has arrogated to itſelf the ſame power, as that at Quebec, to make Rules of the nature of Penal Laws, by declaring, proſpectively, that a non compliance with certain of its Rules, ſhall conſtitute the crime of Contempt.

2d. The Court at Montreal has extended the power and duties of Attornies, in reſpect of the concerns of the perſons by whom they have been employed, beyond the limits determined by law.

3d. The Court at Montreal, in imitation of the Court of Appeals and of the Court of King's Bench at Quebec, has made depoſits of certain ſums of money, conditions precedent to the exerciſe of legal rights, by declaring that no Exception *Declinatoire* (Plea to the Juriſdiction *à la forme*, or *dilatoire*, ſhall be received without a previous depoſit of Two Guineas, and by requiring a previous depoſit of fees to entitle a party to the benefit of a Trial by Jury.

4th. The Court at Montreal, in imitation of that at Quebec, has attempted to alter the law of *Peremption*, and has eſtabliſhed a new Rule of *Preſcription* with reſpect to ſuits, by declaring that the neglect of the Plaintiff during two Terms, to proceed in his Cause, ſhall occaſion the diſmiſſal of it, on motion of the Defendant; and if the Defendant do not ask for the diſmiſſal of the Action, the Court is to exerciſe the ſame "*ex officio*" authority as the Court at Quebec, by diſmiſſing it of its own accord, *ex mero motu*.

But the Court at Montreal has outſtripped the Court at Quebec in preſcribing limits to the Rights of his Majeſty's Subjects.

By the Rules of both Courts, a ſuſpenſion of proceedings in a Cauſe for a very ſhort time, is fatal to the Plaintiff; but the Court at Montreal has even rendered the moſt diligent and uninterrupted proſecution of the Plaintiff's Rights inſufficient to ſecure to him the benefit of the Laws of his Country, by the following moſt extraordinary regulation:

"And inaſmuch as every Plaintiff or Demandant ſhould be bound to "proſecute his Claim within a reaſonable time to a final concluſion, it is ordered that no cauſe ſhall remain on the Records of "the Court for the purpoſe of any further proceedings therein "being had, after twelve Terms from the inſtitution of ſuch Action or demand (of which the Term in which the ſame was inſtituted ſhall be accounted one) unleſs ſufficient cauſe be ſhewn to the "contrary; and that either party intereſted in the cauſe, may on the "firſt day of the thirteenth Term, or at any other ſubſequent period, "move for a Judgment declaring an abſolute "*Peremption*" in the "ſaid Cauſe, and diſmiſſing the ſame as aforeſaid, or this Court *ex* "*officio*, upon the Certificate of the Prothonotary that the ſaid Cauſe "has been entered in this Court during twelve Terms as aforeſaid, "will

" will dismiſs ſuch Cauſe, and adjudge an abſolute " *Peremption*" of " the ſame, with Costs."

By this extravagant ſtretch of authority, the Court at Montreal has aſſumed to itſelf a diſcretionary Power of determining the duration of a ſuit at Law and altho twelve Terms are allowed by this Rule for bringing it to a concluſion, whatever the nature of the proceedings may be, and whatever cauſes of delay may occur, even this period of time may at the pleaſure of the Court (if this exerciſe of its Power be acquieſced in) be ſtill further abridged, and the right to legal remedies in the Court at Montreal become merely nominal.

Your Committee are of opinion that the ſaid last mentioned Rule is illegal, arbitrary and destructive of the most important rights of His Majesty's Subjects, and that in making it the Court has committed a most unjustifiable uſurpation and abuſe of authority.

By the Provincial Ordinance 25 Geo. III. c. 11. for regulating the proceedings in the Courts of Civil Judicature, the mode of proſecuting demands in the Courts is preſcribed, and the ſervice of a Writ of Summons and declaration on the Defendant is neceſſary to render the Defendant amenable to their Juriſdiction and enable them to take cognizance of the Plaintiff's demand. Nevertheleſs, the Court at Montreal, in defiance of this Law, has preſcribed a different courſe to be purſued in certain caſes, by declaring, " that every Barriſter, Advocate, " or Attorney, who may be in practice in this Court, and not have ab- " ſented himſelf for twelve months, and all the ſeveral Officers of the " Court ſhall reſpectively be held and conſidered as perſonally preſent " to anſwer every legal claim, ſuit and demand, that may be preferred " againſt either of them by any perſon whomſoever, and ſhall be bound " to anſwer the ſame, without the ſervice of the proceſs of ſummons " requiring an appearance to anſwer any ſuch demand; the courſe of " proceedings being in every other reſpect conformed to according to " the General Rules of Practice." (Sect. 7. Art. 8.)

Your Committee are of opinion, that the ſaid laſt mentioned rule hath been made contrary to law and is arbitrary, and implies the aſſumption of legiſlative authority.

By the Provincial Ordinance of 25 Geo. III. C. 2. Art. 4. a creditor is entitled to a *Capias ad reſpondendum*, or attachment againſt the body of his debtor, upon an affidavit "That the defendant is perſonally indebted to the plaintiff in a ſum exceeding ten pounds ſterling, and "that the defendant is immediately about to leave the Province, &c." Under this Ordinance it has always been conſidered that the right to an attachment againſt the body is given only when a debt to the amount ſpecified in the Ordinance is due, and that it cannot be obtained on demands for unliquidated damages; nevertheleſs, the Court at Montreal has made the following Rule: "It is ordered that in every caſe where "a plaintiff may under any ſpecial circumſtances of coſts, treſpaſs, or "perſonal injuries to him done by the defendant, apply for a *Capias ad "reſpondendum*, to hold ſuch defendant to ſpecial bail in the due courſe "of proceedings thereupon, he ſhall by his affidavit in that reſpect to be "made, over and above ſwearing to a preciſe amount of damages ſuſtained, be bound in the ſaid affidavit fully to ſtate the ſeveral grounds "and circumſtances of ſuch coſts or perſonal injuries and damages, in "order that the Judge taking ſuch affidavit may, in his diſcretion, make "ſuch order for bail as to him may appear reaſonable from the circumſtances of facts depoſed in ſuch affidavit, whether for the ſum ſo depoſed to or any leſſer ſum, if any ſuch order for bail may be reaſonable to be made thereon, and without ſuch ſpecial grounds to be ſtated "as aforeſaid, that no Writ of *Capias ad reſpondendum* as aforeſaid, for "coſts or perſonal injuries, be granted or awarded."

By this Regulation, contrary in the opinion of your Committee to the ſaid Ordinance, the right to an attachmnnt againſt the body, on a demand for unliquidated damages, is recognized. This right ſo recognized, is at the ſame time ſhackled with new reſtrictions, and your Committee have remarked with ſurpriſe that an affidavit of a ſpecific ſum of damages is required, and at the ſame time a diſcretionary power is given to the Judge to fix the amount for which bail is to be taken at any leſſer ſum which he may think fit. Your Committee are of opinion that the ſaid Regulation is illegal and arbitrary, and implies the aſſumption of legiſlative authority.

By law, perſons entitled to writs of attachment known by the names of *Saiſie-Revendication*, and *Saiſie-Arrêt*, may ſue out the ſame and cauſe

cauſe them to be executed, without any pecuniary depoſit in the hands of the Sheriff, to whom the law has given a ſpecial lien or privilege on the effects he may attach under ſuch proceſs, in virtue of which he is entitled to retain them till the expences incurred in conſequence of the ſeizure of them be paid. Nevertheleſs, the Court at Montreal has made the following Rule: "Whereas the execution of Writs of *Saisie Revendication* or *Saisie Arrêt*, in the hands of the defendant, are frequently attended with unreaſonable charges upon the Sheriff's office and duty, and might be highly prejudicial to the rights of perſons in the legal poſſeſſion of chattels and effects ſo ſeized; It is ordered that every plaintiff ſuing out ſuch writ, ſhall be bound, upon the delivery of any ſuch proceſs to the Sheriff, to make and deliver to the Sheriff ſufficient advances in money for the neceſſary expences in the execution of every ſuch writ, or otherwiſe ſatisfy and ſecure the Sheriff for the prompt payment thereof: and failing ſo to do, the Sheriff may refuſe to receive the ſaid writ, or to proceed in the execution of the ſame, and that in every caſe where the Sheriff may execute ſuch writ, his recourſe for the payment reſpecting the ſervice of ſuch writ, and the advances to guardian or record, ſhall be againſt the plaintiff perſonally, and not upon the goods which may be attached." (Sec. 36. Art 8.)

It muſt be remarked with ſurpriſe, that the proviſions of law are not only ſet aſide by this regulation, but a diſcretionary power is given to the Sheriff to aſk what ſum of money he pleaſes as the condition upon which he will execute, or even receive, the King's Writ, and it is thus made to depend on his will and pleaſure whether an injured man ſhall have the remedies given him by law.

Your Committee are of opinion, that the ſaid laſt mentioned regulation is illegal and arbitrary, and a groſs violation of the rights of the ſubject, and implies the aſſumption of legiſlative authority.

The law of Canada, at the ſame time that it provides remedies for creditors, has ſo regulated the exerciſe of them as to preclude injury or injuſtice in enforcing them, and the wiſdom of its proviſions reſpecting the remedy by *Saisie-Arrêt*, cannot be called in queſtion. Nevertheleſs, the Court at Montreal has taken upon itſelf to ſupply ſuppoſed deficiencies,

ficiencies, and make corrections of the law on that head, by the following Rule: "Whereas under the preſent courſe of practice, it may happen that upon the ſervice of a *Saiſie Arrêt* at the *dernier domicile* of the "*Saiſi*, duly certified, final judgment may be made againſt the *Tiers* "*Saiſi* for the principal debt due to the plaintiff, although the *Tiers* "*Saiſi* may never have received the Writ of *Saiſie*, nor have had ſuch "reaſonable knowledge of the ſame, as under the peculiar circumſtance "of his ſituation he was enabled to appear thereupon, and make his de-"claration conformable to law; in order, therefore, to prevent the "manifeſt injuſtice that may be done by ſuch concluſive judgment; It "is ordered, that in future no concluſive or final judgment ſhall be "made againſt the *Tiers Saiſi* for payment of the plaintiff's debt by "reaſon of his non attendance and anſwer as aforeſaid, unleſs it ſhall "appear that the ſervice of ſuch *Saiſie Arrêt* and notice had been per-"ſonally made to and upon the *Tiers Saiſi*; and that in every other "caſe of legal ſervices at the *domicile*, the judgment to be awarded a-"gainſt a *Tiers-Saiſi*, in default, will be proviſional, admitting ſuch "*Tiers Saiſi* to appear at a future day and take off ſuch default, and "make anſwer to the *Saiſie* or attachment, or ſhew cauſe upon the ir-"regularity of the ſervice of ſuch writ." (Sect. 39)

It would appear from this as well as other Rules, that the Court at Montreal knows no bounds to its authority, and that imaginary inconveniencies and defects will induce it to exerciſe a Legiſlative Authority, and your Committee muſt expreſs their opinion, that in this, as well as in the many preceding inſtances, the Court at Montreal has arrogated to itſelf powers which belong to the Legiſlature only, and that the laid laſt mentioned Regulation is altogether illegal.

Your Committee apprehend it is not the buſineſs of the Courts of Juſtice to preſcribe to parties the grounds and language they are to adopt in their pleadings, but to determine upon the ſufficiency and effect of pleadings after they come before them, nor can they without violating the principles of law and reaſon, compel parties to make ſtatements and admiſſions in their pleadings, and exhibit evidence, contrary to their intereſts. Your Committee feel themſelves therefore, called upon to notice two extra ordinary Rules of the Court at Montreal with reſpect to pleadings, by which ſuch Regulations are made.

By

By the firſt, it is declared, " whereas actions are frequently inſtituted, " and declarations thereupon framed conformable to actions in England, " of aſſumpſit with general counts therein contained, for groſs Sums " thereby claimed, without ſtating in ſuch declarations what part thereof " may have been paid, or ſhould not reaſonably be claimed by, or ad- " judged to the Plaintiff, and to which actions general pleas of non af- " ſumpſit have been made, and various grounds of defence thereupon " raiſed, and claims made of evidence to be adduced, that could not " have been foreſeen by the Plaintiff, under ſuch general pleas, and " which may be highly prejudicial to the the parties, it is therefore or- " dered that on any ſuch actions the Plaintiff ſhall generally ſtate all " ſuch deductions from the groſs Sums claimed, as may be in his know- " ledge, and ſhall, by his demand, declare and claim the preciſe balance, " or monies due by the reaſon of ſuch aſſumpſit, undertaking or pro- " miſe as aforeſaid, and for recovery of which the defendant may be ſued " and that on the return day in ſuch action, the Plaintiff ſhall fyle an ex- " hibit, ſtating the preciſe amount of his demand, and in ſuch ſtatement, " ſhall inſert and ſet down all matters that may have been received, " whether in money or other valuable thing which ought to be deducted " from the groſs amount of ſuch general demand as aforeſaid, and upon " which exhibit ſhall be written a notice to the Defendant of the preciſe " amount of the Plaintiff's claim, and for recovery of which the De- " fendant is proſecuted in the ſaid action, and failing ſo to do, the De- " fendant ſhall not be bound to anſwer the Plaintiff's demand, or be " adjudged in default on the notice aforeſaid, and that every plea to any " ſuch action of aſſumpſit ſhall contain the ſpecific grounds of defence " upon which the Defendant may intend to adduce evidence in ſupport " of any matter to be offered againſt the Plaintiff's demand, and that no " evidence, verbal or written, ſhall be received in any ſuch action, but " upon and in ſupport of ſuch ſpecial matters alleged in defence, and " that may have direct relation thereto, and the Plaintiff's demand " (43 Sect.) By the ſecond of the rules above referred to, it is declared, " whereas the practice of fyling general pleas upon plain demands under " an *Acte authentique*, which require no evidence on the part of the " Plaintiff, and the Defendant under ſuch general plea demanding a " right of *enquête* or proof, has been attended with great delays; it is " ordered, that whenſoever a Plaintiff may proſecute an action upon an

" *Acte*

" *Acte authentique*, and upon which action no verbal teſtimony may be " requiſite to ſupport the Plaintiff's demand, that every plea to the " merits of the Plaintiff's action ſhall contain ſpecific grounds to be " ſet up in proof, to leſſen, exonerate and diſcharge the defendant " from ſuch demand, and upon which ſpecial grounds of evidence " may be legally adduced, and that failing ſuch specific grounds of " defence, the Plaintiff may of right ſet down the Cauſe on the " Diary or *Rôle de droit* for hearing and judgment on the merits, " without proceeding to ſet down the cauſe on the Diary or *Role d'En-* " *quête* for proof, previous to ſuch hearing on the merits." (Sect. xi.)

Your Committee are of opinion that the ſaid laſt mentioned regulations are contrary to the principles which ought to govern the adminiſtration of Juſtice, and are illegal and arbitrary and imply the aſſumption of Legiſlative authority.

In the Rules of the ſaid Court of Montreal there are various regulations upon the ſubject of Bail, by which that Court, in the opinion of your Committee, hath exercised legiſlative authority, and the legal obligations reſulting from the Bail Bond to the Sheriff, are thereby modified and in ſome caſes even cancelled.

By the Provincial Statute 41ſt Geo. III. Chap. 2. Sec. 2. it is enacted, " That in all actions oppoſitions and ſuits, proſecuted before the " Courts of Civil Juriſdiction in this province, by any perſon or per- " ſons reſiding without the pro vince, whether ſuch perſon or per- " ſons be ſubjects of His Majeſty or not, the Defendant or Defend- " ants, or others concerned may demand and obtain good and ſuffici- " ent ſecurity at the diſcretion of the ſaid Court for the payment of " their coſts, in caſe the Plaintiffs or proſecutors ſhould fail in ſuch " their ſaid actions oppoſitions or other ſuits, and all proceedings ſhall " be ſtaid and ſuſpended, until ſuch ſecurity ſhall have been offered " and received."

Without regard for this poſitive enactment of the Legiſlature, the Court at Montreal preferring its own Wiſdom to that of the Legiſlature and in contempt of its authority has made Regulations totally different and repugnant to the ſaid Law, by declaring " That where any " perſon

" person not resident within this province may prosecute any orignal " or incidental demand or claim, by intervention and opposition, he " shall be bound within two days after the same may be entered in " Court to give security for costs if a motion may be made for that " purpose to answer the opposite party's Costs, if such plaintiff or " claimant, should fail to make good his demand; and that every party " legally entitled so to move shall obtain as of right an order for se- " curity being duly entered within two days after such motion, and on " failure thereof that the action, claim, demand, or opposition afore- " said shall be dismissed with costs."

" And it is further ordered that every person who may be entitled to " such security for costs, shall be bound to move therefor within the " period of four days from the entry of the action or claim aforesaid " otherwise he shall be held and considered as having waved and " relinquished his right to security for Costs as aforesaid " (Sect. 9. " Art. 1. 2 and 3.)

These regulations contravene the said Statute in the following points. 1st The statute limits no time within which security for Costs is to be given, whereas the Court has fixed the short limitation of two days.

2nd. The statute subjects the plaintiff non resident to a suspension of proceedings in his cause till he give security for costs, whereas the Court at Montreal subjects him to the loss of his action if he do not give security within the time it prescribes —3d. The statute limits no time within which the Defendant is to move for security for costs, whereas the Court compels him to move for it within four days, and in default of his doing so deprives him of the right altogether.

Your Committe are therefore of opinion that the said last mentioned Regulations are manifestly contrary to law and have been made in defiance of the authority of the Legislature.

By the provincial ordinance of 25th Geo. III. Cap. 2d. Art. 12. either party in a cause may obtain the examination of a Witness about to leave the province upon an affidavit required for that purpose and this right it has been determined and admitted belongs to either party as well before as after issue joined:

Nevertheless the Court at Montreal has laid restraints and restrictions on this right by declaring " That no examination of any witness " about to depart the province shall be had or taken in any cause during " any Term or sitting of this Court, unless issue be joined on the merits or matters of fact in controversy between the parties, the examination of a party on *faits et articles* as provided by the Rules of " Practice excepted."

" Nor shall any such examination of a witness about to depart the " province be heard or taken in any cause, on the part of the Defendant " where by the Rules of Practice such Defendant ought to have pleaded " to the merits and hath not done so. Nor shall any such examination " of a witness, be had or taken on the part of the plaintiff, where by the " Rules of Practice he should have replied to the Defendants Plea or " taken issue on the merits and hath not so done previous to his application for the examination of a witness as aforesaid." (27th Sect. Art. 5 and 6.

Your Committee are of opinion that the said last mentioned Regulations are repugnant to the said article of the provincial ordinance last cited and are illegal and arbitrary and imply the assumption of Legislative authority,

By the 21st Art. of the 22d title of the ordinance of 1667 being part of the Law of this province, parties are prohibited from examining more than ten witnesses to one fact, on pain of bearing the expences attending the examination of a larger number even tho' the costs be finally awarded to them. The words of the ordinance are " *Défendons aux* " *parties de faire ouir en matière civile plus de dix Témoins sur un même* " *fait, et aux Juges ou Commissaires d'en entendre un plus grand nom-* " *bre: autrement la partie ne pourra pretendre le remboursement des frais* " *qu'elle aura avancé pour les faire ouir, encore que tous les dépens du* " *procès lui soient adjugés en fin de cause.*"

Notwithstanding this law, the Court at Montreal has made the following regulations " the Court having taken into consideration the a- " buses that are liable to be committed by the allowance for the subpœ- " naing and attendance of any unlimited number of witnesses whatsoever " in

" in cauſes brought to iſſue in this Court; It is ordered that from and " after this day in any cauſe wherein witneſſes ſhall be ſubpœnaed to " appear and give evidence in this Court, no allowance whatever on " the taxation of coſts in favor of the one party againſt the other ſhall be " made for ſubpœnaing and attendance of more than ſix witneſſes (if ſo " many there ſhall be) for each iſſue that may be properly joined be- " tween the parties, ſhould there be more than one in any cauſe."

" And whereas by the Rules of Practice no party in any cauſe hath a " right to tax coſts againſt an oppoſite party for the examination of more " than ſix witneſſes upon any iſſue raiſed in ſuch Cauſe; yet the oppoſite " party is frequently put to charges & expences in reſpect to the exami- " nation of witneſſes above the number allowed, it is therefore ordered, " that no further examination of witneſſes above the number of ſix as " aforeſaid ſhall take place, unleſs the party moving for the ſame do firſt " tender and pay to the Attorney of the oppoſite party ſix ſhillings and " eight pence coſts upon each witneſs ſo to be examined above the " number aforeſaid. Nor ſhall any coſts be taxed to any Attorney, as " between Attorney and Client, for the examination of a greater num- " ber than ſix witneſſes, on any iſſue as aforeſaid" (Sect. 27, Art. 1 and 28.)

Your Committee are of opinion that the ſaid laſt mentioned regula- tions are evidently contrary to law and reaſon, and inconſiſtent with the firſt duties of a Court of Juſtice, and impoſe reſtrictions, reſtraints and burthens upon His Majeſty's Subjects, in the proſecution and defence of their rights, whereby the attainment of Juſtice may in many caſes be impeded or altogether prevented.

Among the regulations of the Court at Montreal is a rule by which parties who make demands in that Court, are in certain caſes exempt- ted from any proof at all in ſupport of them. The Rule is in the fol- lowing words " whereas it frequently happens that in cauſes where it " appears that the Defendant is in a ſtate of *Decomfiture*, motions are " made and orders granted for calling in the ſeveral Creditors of ſuch " Debtor to appear in the ſaid cauſe, and atteſt their reſpective claims " upon the effects and eſtate of the ſaid Debtor previous to a diſtribution " of the ſame: it is ordered that the Plaintiff or Defendant, or any one

" of the Creditors of ſuch Debtor may object to any claim which may " be made in conſequence of any advertiſement and public notice as " aforeſaid, and controvert and oppoſe the ſame, provided ſuch Plaintiff " or Defendant or any ſuch Creditor as aforeſaid ſhall, within the ſpace " of ten days after the fyling ſuch claim, fyle his oppoſition thereto, " and if the Claimant may reſide in this City, or have a domicile therein, " give notice to the claimant of ſuch oppoſition, and require the ſaid " claimant to ſupport the ſame before this Court by ſuch legal courſe as " is obſerved in the ſupport of claims or oppoſition, and it is further or- " dered that every claim made in conſequence of any public notice as " aforeſaid, by any perſon reſiding in this City, or who may have elected " a domicile therein, and ſuch election of domicile be entered of record " with the claim aforeſaid, and which may not be oppoſed as aforeſaid, " ſhall be conſidered and held to be admitted by all the parties intereſt- " ed thereupon, as legal and juſt, and as ſuch adjudged by this Court " upon the diſtribution of any debtors effects and eſtates as aforeſaid, " and it is further ordered that the above Rules ſhall apply and be con- " ſidered as binding whenever creditors of any deceaſed perſon may by " public notice be called before the Court to aſſert their reſpective cre- " dits upon the effects and eſtate of ſuch deceaſed perſon; that the pre- " ſent Rule ſhall be held alſo to extend to all claims made by oppoſition " *à fin de conſerver*, upon monies levied and returned by the Sheriff on " any writ of execution ſued out from this Court."

The courſe of proceedings upon oppoſitions and interventions or claims, as they are called in this Rule, has always been ſimilar to that in original actions, and both law and reaſon concur in requiring proof to ſubſtantiate demands before they are allowed.

Your Committee are of opinion that the ſaid Rule is illegal, arbitrary and unjuſt, and implies the aſſumption of legiſlative authority.

The Court at Montreal has not only by its authority ſuperſeded in certain caſes the neceſſity of proof required by law, but it has alſo altered the mode of receiving it in the moſt eſſential point, its publicity, by transferring the addućtion of it from the open Court to a private chamber, there to be received in ſecrecy, and this in direct contradiction to the Statute Law of the Province.

By

By the Provincial Ordinance of the 25th Geo. III. Chap. 2. Art. xi. for regulating the proceedings in the Courts of Civil judicature, it is enacted, that in all cauſes not tried by a Jury, and where the trial "is to "be by the depoſition of witneſſes, and by proof, as at preſent uſed in "His Majeſty's ſaid Courts of Common Pleas, the Court ſhall, after "iſſue joined on the merits of the cauſe, in the manner as hereafter "expreſſed, appoint a day for hearing the evidence of the parties, plain-"tiff and defendant, and cauſe the ſame to be taken down in writing by "the Clerk of the Court, *in open Court*, and ſigned and ſworn to by "each reſpective witneſs, ſave and except as hereafter provided for, "witneſſes abſent by reaſons of ſickneſs, or of departing the Province."

In requiring that the proceedings of His Majeſty's Courts ſhould be public, and evidence taken in *open Court*, this law ſanctioned what had been previouſly the practice of the Courts under the Engliſh dominion, and, until the making of the Rule referred to, the depoſitions of witneſſes, and the examination of parties on interrogatories *(Faits et Articles)* had always been taken in open Court, in the preſence of the Parties or of their Attornies. Nevertheleſs the Court at Montreal on the 20th April, 1811, publiſhed the following Rule. "It is ordered that the "anſwers to the interrogatories of every party to be examined on *Faits* "*et Articles*, ſhall be received and ingroſſed by one of the Prothono-"taries of this Court, from the Declaration of the examinant, and not "in the preſence of any adverſe party, nor in the preſence of any Attor-"ney of either of the parties in the cauſe; and the ſaid anſwers, when "ſo engroſſed, ſhall be brought into this Court, (or before the Judges "ſitting in vacation, when ſuch examination may be appointed to be "taken in vacation,) there to be received upon the oath of the party to "be examined and not otherwiſe." (Sect. 29.)

Your Committee are of opinion that this rule has been made in manifeſt violation of the ſaid Ordinance, is contrary to the principles which ought to govern the adminiſtration of Juſtice, might in many caſes be deſtructive of the moſt important rights of individuals, and is a moſt dangerous and arbitrary innovation in the proceedings of His Majeſty's Courts.

By

By the 1ſt art. of the 31ſt, title of the Ordinance of 1667, an obligation is imperatively laid on all Courts of Juſtice, to make the awarding of Coſts a conſequence of ſucceſs in all Judicial Proceedings, and all diſcretionary power over coſts is taken from the Courts, "*toute partie*, (says this Law,) *principale ou intervenante qui ſuccombera &c.* "*ſera condamnée aux dépens indéfiniment ſans que ſous prétexte d'équité* "*partage d'avis ou pour quelqu'autre cauſe que ce ſoit, elle en puiſſe être* "*déchargée.*" And afterwards, "*voulons* (continues this Law,) *qu'ils,* "*(les dépens,) ſoient taxés en vertu de notre préſente Ordonnance au profit* "*de celui qui aura obtenu définitivement, encore qu'ils n'euſſent pas été ad-*"*jugés, ſans qu'ils puiſſent être modérés, liquidés ni réservés.*"

By the Provincial Statute of the 41ſt, Geo. III, c. 7, Sect. 17, it is enacted "that the Courts of Criminal and Civil Juriſdiction, within "this Province, ſhall have power and authority within their reſpective "Juriſdiction, to make a table of fees for the officers of the ſaid Court, "the which table the ſaid Courts of Juſtice may alter and correct from "time to time, as they ſhall ſee neceſſary: and the ſaid officers of the "ſaid Courts reſpectively are hereby directed to conform to the ſame."

Altho' under the firſt of theſe Laws, parties are intitled to recover from their adverſaries the coſts of the Judicial Proceedings, in which they have been ſucceſsful, and altho' in virtue of the ſecond, tables of fees have been framed to regulate in all caſes the amount of ſuch coſts, according to the nature of the ſervices performed, and altho' both parties and Attornies have an unqueſtionable legal right to receive the coſts to which they are legally intitled, according to the ſcale of allowance eſtabliſhed by the tables of fees, nevertheleſs the Court at Montreal, in violation of both thoſe laws and of the rights of parties and Attornies, publiſhed the following Rule on the 9th April, 1812, "It is "ordered that no general rule of this Court, granting fees upon certain "buſineſs to be performed in cauſes therein inſtituted, ſhall, in any "manner, be conſidered to extend, to limit or reſtrain any judgmen, "or order of this Court, upon any matter before it, wherein the Court "upon the circumſtances of ſuch matters or buſineſs ſhall award and "adjudge a ſpecific ſum to any party thereupon, and any ſuch particular "order or judgement for coſts that may be made, ſhall determine and "conclude the rights of every perſon therein intereſted; and it is fur-

"ther

" ther ordered that no general allowance of fees, by any Tariff or rule " of this Court ſhall be conſidered as granting a right to ſuch fees for " any buſineſs performed whenever this Court, or any Judge thereof upon " the taxation of Coſts ſhall not conſider ſuch buſineſs to have been re- " gularly and neceſſarily performed." (Section 40.)

Your Committee are of opinion, that the ſaid laſt mentioned Regulation is altogether illegal and arbitrary, and deſigned to veſt in the Judges a diſcretionary power inconſiſtent with law and juſtice, and manifeſtly tending to the oppreſſion of his Majeſty's Subjects.

By the Provincial Statute 20 Geo. III. c. 2. Art. 38, Impriſonment of Debtors for the ſatisfaction of Judgments in certain caſes is permitted, and it is provided, that upon affidavit of the debtor, that he is not worth Ten Pounds, the Plaintiff ſhall pay to the Defendant for his maintenance, &c. 3s. 6d. per week, or an increaſed allowance, not exceeding five ſhillings in time of ſcarcity, and it is enacted, " that " ſuch payment ſhall be made in advance on Monday in every week, " in failure of which, the Court from whence the execution iſſued ſhall " order the Defendant to be releaſed."

Under this law, the Creditor ſatisfies the obligation impoſed on him, by paying the allowance to his Debtor in the courſe of *Monday* in every week. The Court at Montreal have thought proper to lay down a different Regulation, by giving the Creditor only *part* of the day inſtead of the *whole*, allowed by law, to make the payment required of him. The words of this Rule, which was publiſhed on the 20th April 1812, are, " It is ordered that in future, every alimentary penſion o " to be allowed to Debtors in Gaol ſhall be made on each Monday on " or before *Twelve o'clock in the forenoon.*" (Sect. 42.)

Your Committee are of opinion, that the ſaid Rule is evidently contrary to the ſaid Ordinance, and implies the aſſumption of Legiſlative Authority.

Your Committee will here conclude the ſpecification of the principal Rules of the ſaid Courts, which, in their opinion, are repugnant and contrary to law. The innovations which have been made by ſaid

Rules

Rules in the Laws of the Country are ſo numerous and important, the authority they attribute to the Courts ſo arbitrary and deſpotic, and many of them are calculated to produce ſuch injurious conſequences, that your Committee are of opinion, that while theſe Rules are acted upon, and the principles which dictated them influence the Courts of Juſtice, his Majeſty's Subjects in this Province will not enjoy the benefits of their Conſtitution or Laws, their Rights will ceaſe to be ſecure under the protection of the Laws and depend altogether upon the fluctuating will of the Judges. The Rules of deciſion will vary with the Tribunals that are reſorted to; what is deemed law at Quebec, will not be ſo at Montreal, and what has been determined to be Law at both places on one day will, at the pleaſure of the Judges, ceaſe to be ſo on the following day.—Hence an univerſal uncertainty in Civil rights will be produced with all the evil conſequences thence arising.

Your Committee are the more ſtrongly urged to express this opinion of the evils to be apprehended, as the Court of laſt reſort in this province, from the peculiarity of its conſtitution, is not likely to obviate or mitigate theſe evils—The Chief Juſtice of the province and the Chief Juſtice of the King's Bench at Montreal preſide in that Court, in appeals from the Courts of Original Juriſdiction in which they alſo reſpectively preſide as Chief Juſtices. Both theſe Gentlemen concurred in framing the Rules of Practice of the Court of Appeals, by which the firſt encroachments on the Legiſlative authority were made, and they have ſince exerciſed in their reſpective Courts the powers aſſumed by the Court of Appeals—No corrective therefore, can be expected in the latter Court. It is from the conſtitutional meaſures to be adopted by the Aſſembly of Lower Canada only, that correction of preſent abuſes and ſecurity againſt the renewal of them in future can be expected.

Upon the aforeſaid Rules of Practice, your Committee have come to the following Reſolutions:

Resolved, that it is the opinion of this Committee, that the Eighth Section of the Rules of Practice of the Court of Appeals, whereby the depoſit of a ſum of Money not required by law, is made neceſſary to entitle a Party to a Writ of Appeal, is illegal and arbitrary, and of the moſt dangerous example; and that the ſaid Court hath thereby aſſumed Legiſlative authority.

Re-

RESOLVED, that it is the opinion of this Committee, that the Thirtieth Section of the Rules of Practice of the ſaid Court of Appeals, whereby the right of Appeal from an Interlocutory Judgment is barred, unleſs moved for within the time preſcribed by the Court, is illegal, arbitrary & deſtructive of the Rights of His Majeſty's Subjects, and that the ſaid Court hath thereby aſſumed Legiſlative Authority.

RESOLVED, that it is the opinion of this Committee, that the Ninth Section of the Rules of Practice of the Court of Appeals, in ſo far as it makes a Writ of Appeal returnable out of Term, is illegal and arbitrary, and that the ſaid Court hath thereby aſſumed Legiſlative Authority.

RESOLVED, that it is the opinion of this Committee, that the Tenth Section of the Rules of Practice of the Court of Appeals, whereby a Prothonotary by not making a return as therein mentioned, is rendered guilty of a contempt, is illegal and arbitrary, and that the ſaid Court hath thereby aſſumed Legiſlative Authority.

RESOLVED, that it is the opinion of this Committee, that the Thirteenth Section of the Rules of Practice of the Court of Appeals, whereby the Service of a Writ of Appeal upon a perſon who has been Attorney, *ad litem* and on an Attorney *ad negotia* is declared valid, is illegal and arbitrary, and that the ſaid Court hath thereby aſſumed Legiſlative Authority.

RESOLVED, that it is the opinion of this Committee, that the Sixteenth, Seventeenth, Eighteenth and Nineteenth Rules of Practice of the Court of Appeals, whereby regulations are made relatively to the fyling of reaſons of Appeal and Anſwers, are illegal and arbitrary, and that the ſaid Court hath thereby aſſumed Legiſlative Authority, and hath attributed to itſelf a moſt dangerous power of making Orders and Judgments *ex officio* as it is called, inconſiſtent with its Judicial functions, and amounting to a denial of Juſtice.

RESOLVED, that it is the opinion of this Committee, that the Twenty-firſt Section of the Rules of Practice of the Court of Appeals, whereby the power of diſmiſſing *ex officio* appeals in which caſes have not been fyled within Ten Days, and of excluding Reſpondents who have not fyled caſes within that time, from the benefit of a hearing, is attributed to the Court, is illegal and arbitrary, of moſt dangerous tendency, and amounts to a denial of Juſtice, and that the Court hath thereby aſſumed Legiſlative Authority.

RESOLVED, that it is the opinion of this Committee, that the Twenty-fourth and Twenty-ſixth Sections of the Rules of Practice of the Court of Appeals, whereby the Clerk of that Court, without the conſent, privity, or knowledge of either of the Parties in a cauſe, is required to fix the cauſe for hearing, and whereby the Court attributes to itſelf the power of diſmiſſing *ex officio* appeals ſo fixed for hearing, even tho' both parties ſhould be abſent, is illegal and arbitrary, and amounts to a denial of Juſtice, and that the Court hath thereby aſſumed Legiſlative Authority.

RESOLVED, that it is the opinion of this Committee, that the Fourth Art. of the Second Section of the Rules of Practice of the Court of King's Bench at Quebec, whereby Barriſters and Attornies are rendered guilty of a contempt, and ſuſpended for non-payment of fees, is arbitrary and illegal, unjuſt and oppreſſive, and that the ſaid Court hath thereby aſſumed Legiſlative Authority.

RESOLVED, that it is the opinion of this Committee, that the 1st. Art. of the Third Section of the ſaid laſt mentioned Rules, whereby a general enactment of the crime of contempt for a breach of any of the ſaid Rules is made, is illegal, arbitrary, and oppreſſive in the higheſt degree, and the ſaid Court hath thereby aſſumed Legiſlative Authority.

RESOLVED, that it is the opinion of this Committee, that the Second Article of the Third Section of the ſaid laſt mentioned Rules, whereby points of Practice are not permitted to be re-argued, is illegal and arbitrary, and calculated to prevent the fair and open diſcuſſion of litigated points in the ſaid Court.

RESOLVED, that it is the opinion of this Committee, that certain Regulations in the ſaid Rules of Practice, contained in the Eleventh and Fourteenth Articles of the Second Section of the ſaid Rules, whereby the legal mode of proceeding when the Attorney of one of the Parties in a cauſe dies, is diſpenſed with, and a different mode preſcribed, and whereby the powers and duties of an Attorney are continued after final Judgment in all matters collateral and incidental to the Suit, are illegal and arbitrary, and that the ſaid Court hath thereby aſſumed Legiſlative Authority.

RESOLVED, that it is the opinion of this Committee, that the Sixteenth and Nineteenth Articles of the Third Section of the ſaid Rules, which, contrary to the Law of the Land, eſtabliſh a new rule of preſcription, whereby the Plaintiff incurs the loſs of his cauſe, by not proceeding during one Term, if the Defendant moves to that effect, and whereby the power of diſmiſſing a cauſe *ex officio* after two Terms, is attributed to the Court, are illegal and arbitrary, are ſubverſive of the juſt and legal Rights of His Majeſty's Subjects, are of moſt dangerous and injurious tendency, and amount to a denial of Juſtice, and that the ſaid Court hath thereby aſſumed Legiſlative Authority.

RESOLVED, That it is the opinion of this Committee, that the Tenth Section of the ſaid laſt mentioned Rules, whereby a previous depoſit of Money is required to entitle a Defendant to the exerciſe of his legal right of fyling exceptions "*declinatoire*" (Plea to the Jurisdiction) "*Peremptoire à la for-*"*me*," and "*dilatoire*," is illegal and arbitrary, may enable the Court to exerciſe Juriſdiction contrary to Law, and deprive His Majeſty's Subjects of the means of defence; is of moſt dangerous and injurious tendency, and amounts to a denial of Juſtice, and that the ſaid Court hath thereby exerciſed Legiſlative Authority.

RESOLVED, that it is the opinion of this Committee, that the Fourth Article of the Eleventh

Eleventh Section of the ſaid Rules, whereby a depoſit of Money is required to entitle a party to the benefit of a trial by Jury, is illegal and arbitrary, of moſt dangerous tendency, and amounts to a denial of Juſtice, and that the ſaid Court hath thereby aſſumed Legiſlative Authority.

RESOLVED, that it is the opinion of this Committee, that in the ſaid Rules, Regulations of a Legiſlative nature, as to proceedings to be had preparatory to the diſtribution of Monies ariſing from Judicial Sales, and as to a conſtructive admiſſion of claims inferred by the Court, have been made.

RESOLVED, that it is the opinion of this Committee, that the Sixth Article of the Twelfth Section of the ſaid Rules, whereby a ſpecific form for the election of a *Domicile* is preſcribed, and the Seventh and Ninth Articles of the ſame Section, whereby a ſpecific form for an oppoſition *afin de conſerver* is preſcribed, and the exhibition of certain evidence with the oppoſition is required for its validity, are illegal and arbitrary, and impoſe unreaſonable, unjuſt, and injurious reſtraints upon His Majeſty's Subjects, in the exerciſe of their legal rights, and that the ſaid Court hath thereby aſſumed Legiſlative Authority.

RESOLVED, that it is the opinion of this Committee, that all the Regulations contained in the ſaid Rules, whereby ſpecific forms are preſcribed for pleadings, motions, notices, and other papers exhibited by Parties or their Attornies in a cauſe, are illegal, arbitrary, and highly prejudicial to the intereſt of His Majeſty's Subjects, and calculated to defeat in many cases, their juſt and legal rights, and that the ſaid Court hath thereby aſſumed Legiſlative Authority.

RESOLVED, that it is the opinion of this Committee, that the Regulations contained in the Rules of Practice of the Court of King's Bench at Montreal, whereby that Court has arrogated to itſelf the ſame power as that at Quebec, to make Rules of the nature of Penal Laws, be declaring proſpectively, that a non-compliance with certain of its Rules ſhall conſtitute the crime of contempt, are illegal and arbitrary, and of moſt dangerous tendency, and that the ſaid Court at Montreal, hath thereby aſſumed to itſelf Legiſlative Authority.

RESOLVED, that it is the opinion of this Committee, that the ſaid laſt mentioned Court, by certain of its Regulations hath extended the power and duties of Attornies, in reſpect of the concerns of the perſons by whom they have been employed, beyond the limits determined by Law.

RESOLVED, that it is the opinion of this Committee, that the Rules of the ſaid laſt mentioned Court, made in imitation of the Rules of the Court of Appeals, and of the King's Bench at Quebec, whereby the depoſit of certain Sums of Money are made conditions precedent to the exerciſe of the legal right of pleading exceptions "*Declinatoire*," (Plea to the Juriſdiction) "*Peremptoire à la forme*," and "*Dilatoire*," and of obtaining a Trial by Jury, are illegal and arbitrary, of the moſt dangerous and injurious tendency, and amount to a denial of Juſtice, and that the ſaid Court at Montreal hath thereby exerciſed Legiſlative Authority.

RESOLVED, that it is the opinion of this Committee, that the Rule of the ſaid laſt mentioned Court, whereby that Court hath attempted to alter the Law of "*Peremption d'inſtance*" and has eſtabliſhed a new Rule of Preſcription with reſpect to Suits, by declaring that the neglect of the Plaintiff during two Terms, to proceed in his cauſe, ſhall occaſion the diſmiſſal of it, on motion of the Defendant, and if he do not ask for the diſmiſſal of the action, the Court is to exerciſe the power of diſmiſſing it *ex officio*, is illegal and arbitrary, of the moſt dangerous and injurious tendency, and amounts to a denial of Juſtice, and that the ſaid Court hath thereby aſſumed Legiſlative Authority.

RESOLVED, that it is the opinion of this Committee, that the Second Article of the Thirty-fourth Section of the ſaid Rules, whereby a limitation of Twelve Terms is preſcribed for the duration of a Suit at Law, and the ſaid Court is empowered to diſmiſs a cauſe on the firſt day of the Thirteenth Terms or on any ſubſequent day, on motion of any party in the cauſe, or of it, own accord *ex officio*, is illegal, arbitrary and deſtructive of the juſt and legal rights of His Majeſty's Subjects, a groſs abuſe of authority, and amounts to a denial of Juſtice, and that the ſaid Court hath thereby aſſumed Legiſlative Authority.

RESOLVED, that it is the opinion of this Committee, that the Eighth Article of the Seventh Section of the ſaid Rules, whereby Juriſdiction is given to the Court over Barriſters, Advocates, and Attornies, and they are rendered liable to anſwer all demands againſt them, without the ſervice of any proceſs of Summons on them, as required by Law, is illegal and arbitrary, and that the ſaid Court hath thereby aſſumed Legiſlative Authority.

RESOLVED, that it is the opinion of this Committee, that the rule contained in the Eighth Section of the ſaid Rules, whereby the right of Plaintiffs to a Writ of *Capias ad reſpondendum* on demands for unliquidated damages in caſes of tort, treſpaſs, and perſonal injuries, is permitted on certain conditions preſcribed by the Court, is illegal and arbitrary, and that the ſaid Court hath thereby aſſumed Legiſlative Authority.

RESOLVED, that it is the opinion of this Committee, that the Eighth Article of the Thirty-ſixth Section of the ſaid Rules, whereby perſons ſuing out Writs of "*Saiſie-Revendication*" or "*Saiſie-Arrêt*," are compelled to make ſuch advances in money, or give ſuch ſecurity as the Sheriff may require, without which the Sheriff may refuſe to execute the King's Writ, or even receive it, and whereby the Sheriff is deprived of his lien, or recourſe on Goods ſeized, is arbitrary and illegal, impoſes reſtraints not eſtabliſhed by Law, and gives a latitude of diſcretion to the Sheriff, by which injuſtice and oppreſſion muſt be occaſioned, and that the ſaid Court hath thereby aſſumed Legiſlative Authority.

RESOLVED, that it is the opinion of this Committee, that the Rule of the ſaid Court, contained in the Thirty-ninth Section of the ſaid Rules, whereby regulations are made reſpecting Garniſhees or "*Tiers-Saiſis*," and proviſional

visional Judgments of a particular nature, required to be made againſt them, is illegal and arbitrary, and that the ſaid Court hath thereby aſſumed Legiſlative Authority.

RESOLVED, That it is the opinion of this Committee, that the Rules of the said Court, contained in the forty-third section of the said Rules, and in the eleventh section of the said Rules, whereby parties are compelled to make certain statements of fact in their Declarations and Pleas, and certain admissions of fact in their declarations and in exhibits required to be fyled, are arbitrary and illegal, and inconsistent with the principles that ought to govern the administration of Justice, and that the said Court hath thereby assumed Legislative authority.

RESOLVED, That it is the opinion of this Committee, that by certain regulations contained in the said Rules upon the subject of Bail, the said Court hath exercised Legislative authority, and that thereby the legal obligations resulting from the Bail bond to the Sheriff are modified and in some cases even cancelled.

RESOLVED, That it is the opinion of this Committee, that the first, second and third articles of the 9th Section of the said rules, whereby the said Court hath made regulations respecting the giving of security by persons who are not resident within this province, are in direct contradiction to the provisions of the Provincial Statute, 41st Geo. III. chap. 2. sect. 2. are altogether illegal and arbitrary, and that the said Court hath thereby assumed Legislative authority.

RESOLVED, That it is the opinion of this Committee, that the fifth and sixth articles of the twenty-seventh section of the said Rules, whereby restraints and restrictions are laid upon the legal right of parties to examine witnesses, about to leave the province, are illegal and arbitrary, and that the said Court hath thereby assumed Legislative authority.

RESOLVED, That it is the opinion of this Committee, that the first and eighteenth articles of the twenty seventh section of the said Rules, whereby no allowance in the taxation of costs for more than six witnesses upon an issue is permitted, and whereby to entitle a party to examine more than six witnesses, the payment of a certain sum of money to the Attorney of the adverse party is required, and whereby Attornies are not permitted to charge their clients for the examination of more than six witnesses, are illegal and arbitrary, and impose restrictions, restraints, and burthens upon His Majesty's subjects in the prosecution and defence of their rights, whereby the attainment of Justice may in many cases be impeded, or altogether prevented, and that the said Court hath thereby assumed Legislative authority.

RESOLVED, That it is the opinion of this Committee, that the eighth article of the thirty-seventh section of the said Rules, whereby, in certain cases of intervention, claims and oppositions before the Court, a constructive admission of demands is established, and parties exempted from proof thereof

thereof is illegal, arbitrary, unjust and destructive of the rights of His Majesty's subjects, and that the said Court hath thereby assumed Legislative authority.

RESOLVED, that it is the opinion of this Committee, that the rule of the said Court contained in the twenty-ninth section of the said Rules, whereby the answers of parties examined on interrogatories (" *faits et articles*") are required to be taken by one of the Prothonotaries of the Court, not in the presence of any adverse party, nor in the presence of any Attorney of either of the parties in the cause and out of Court hath been made in manifest violation of the ordinance or law in that behalf made, is contrary to the principles which ought to govern the administration of Justice, might in many cases be destructive of the most important rights of His Majesty's subjects, and is a most dangerous and arbitrary innovation in the proceedings of His Majesty's Courts, and that the said Court hath thereby assumed Legislative authority.

RESOLVED, That it is the opinion of this Committee, that the Rule contained in the fortieth section of the said Rules, whereby the said Court hath attributed to itself an unlimited discretion over costs, as well those recovered by and payable to parties, as those payable to Attornies, and the power of granting as large or small a sum for costs as it may think fit, in each particular cause, is a manifest violation of the just and legal rights of His Majesty's subjects, and designed to vest in the Judges a discretionary power inconsistent with law and Justice, and manifestly tending to the oppression of His Majesty's subjects, and that the said Court has thereby assumed Legislative authority.

RESOLVED, That it is the opinion of this Committee, that the Rule contained in the forty second section of the said Rules, whereby the allowance payable to Debtors confined in Goal is required to be paid " *before twelve o'Clock in the forenoon,*" is manifestly contrary to the provision in that behalf made in the Provincial Ordinance 25th Geo. III. chap. 2. Art. 28th. and is illegal and arbitrary, and that the Court hath thereby assumed Legislative authority.

Your Committee have maturely considered the last branch of the reference made to them, *viz:* " The course to be pursued for vindi- " cating the authority of the Legislature, and repressing such abuses of " Judicial authority." The written Constitution which this Province owes to the justice and liberality of the Parliament of Great Britain, not having established any Tribunal before which abuses, such as are the subjects of this Report, can be brought judicially; your Committee respectfully submit their opinion, that it is expedient to bring them under the consideration of His Majesty's Government in England, in such form as the wisdom of the House may prescribe, in order that justice may be done to His Majesty's faithful subjects in this Province.

(Signed) J. STUART, Chairman.

ORDERED, That the ſaid Report be taken into conſideration on Friday next.

Friday, 18th February, 1814.

THE order of the day, for taking into conſideration the Report of the Special Committee appointed to examine particularly the Rules of Practice of the Courts of Juſtice in this Province, and to report in detail upon the principal points wherein they are contrary and repugnant to the Law of the Land; being read—

The Houſe proceeded accordingly to take the ſaid Report into conſideration.

ORDERED, That the queſtion of concurrence be now put upon the Reſolutions contained in the Report of the Special Committee.

Accordingly, the firſt of the ſaid Reſolutions being read, and the queſtion of concurrence put thereon, a diviſion enſued:

Yeas 17—Nays 1.

The ſecond to the ſixth of the ſaid Reſolutions, being alſo read, a diviſion again enſued on each queſtion:

Yeas 18—Nays 1.

And the reſidue of the ſaid Reſolutions being read, were, upon the queſtion being ſeparately put thereon, agreed unto unanimouſly.

RESOLVED, That this Houſe doth concur with the Special Committee, in the ſaid Reſolutions.

It was then

RESOLVED, That *Jonathan Sewell*, Eſquire, Chief Juſtice of this Province, be impeached on the ſaid Report and the Reſolutions of the Houſe thereupon, and alſo on the Reſolutions of the Houſe of the 4th inſtant, reſpecting the authority exercised by the Courts of Juſtice, under the denomination of Rules of Practice.

RE-

RESOLVED, That *James Monk*, Eſquire, Chief Juſtice of the Court of King's Bench for the Diſtrict of *Montreal*, be impeached on the ſaid Report and the Reſolutions of the Houſe thereupon, and alſo on the Reſolutions of the Houſe of the fourth inſtant, reſpecting the authority exerciſed by the Courts of Juſtice, under the denomination of Rules of Practice.

RESOLVED, That a Committee of five Members be appointed to prepare Heads of Impeachment againſt the ſaid *Jonathan Sewell*, Eſquire, and the ſaid *James Monk*, Eſquire, on the ſaid Report and Reſolutions; and alſo an humble repreſentation to His Royal Highneſs the Prince Regent, conceived in ſuch terms as may be proper to bring reſpectfully under the conſideration of His Royal Highneſs, the ſaid Heads of Impeachment, in the humble hope that meaſures may thereupon be taken to afford means of obtaining juſtice for His Majeſty's ſubjects in this Province on the ſaid Heads of Impeachment.

ORDERED, That Mr. *Stuart*, Mr. *Bourdages*, Mr. *Papineau*, Mr. *Lee*, and Mr. *Larue*, do compoſe the ſaid Committee.

RESOLVED, That the ſaid Committee have power to add ſuch Heads of Impeachment as may appear juſt and proper; and that they have power to ſend for perſons, records and papers.

RESOLVED, That the aforeſaid Report, and ſeveral Reſolutions of this Houſe thereupon, as well as the Reſolutions of this Houſe of the fourth inſtant, reſpecting the authority exerciſed by the Courts of Juſtice, under the denomination of Rules of Practice, and the previous orders of this Houſe on the ſame ſubject, be immediately printed.

HOUSE OF ASSEMBLY,

Saturday, 26th February, 1814.

MR. *Stuart*, from the Committee appointed to prepare Heads of Impeachment againſt *Jonathan Sewell*, Eſquire, Chief Juſtice of the Province, and *James Monk*, Eſquire, Chief Juſtice of the Court of King's Bench for the Diſtrict of *Montreal*, acquainted the Houſe, that the Committee had prepared Heads of Impeachment accordingly, and alſo an Humble Repreſentation to His Royal Highneſs the PRINCE REGENT, which they had directed him to report to the Houſe: And he read the Report in his place, and afterwards delivered it in at the Table, where the ſame was read, and the ſaid Heads of Impeachment and humble Repreſentation ſo reported are as follow:

Heads of Impeachment of *Jonathan Sewell*, Eſquire, Chief Juſtice of the Province of *Lower-Canada*, by the Commons of *Lower-Canada*, in this preſent Provincial Parliament aſſembled, in their own name, and in the name of all the Commons of the ſaid Province.

FIRST.—That the ſaid *Jonathan Sewell*, Chief Juſtice of the Province of *Lower-Canada*, hath traitorouſly and wickedly endeavoured to ſubvert the Conſtitution and eſtabliſhed Government of the ſaid Province, and inſtead thereof, to introduce an arbitrary tyrannical Government againſt Law, which he hath declared by traitorous and wicked opinions, counſel, conduct, judgments, practices and actions.

SECONDLY.—That, in purſuance of thoſe traitorous and wicked purpoſes, the ſaid *Jonathan Sewell*, hath diſregarded the authority of the Legiſlature of this Province, and in the Courts of Juſtice wherein he hath preſided and ſat, hath uſurped powers and authority which belong to the Legiſlature alone, and made regulations ſubverſive of the Conſtitution and Laws of this Province.

THIRDLY.—That the ſaid *Jonathan Sewell*, being Chief Juſtice of

this

this Province, and Preſident of the Provincial Court of Appeals, in purſuance of the traitorous and wicked purpoſes aforeſaid, did, on the nineteenth day of January, in the year of our Lord one thouſand eight hundred and nine, make and publiſh, and cauſe to be made and publiſhed, by the Court of Appeals, various regulations, under the name of "*Rules and Orders of Practice,*" repugnant and contrary to the Laws of this Province, whereby the ſaid *Jonathan Sewell*, wickedly and traitorouſly, in ſo far as in him lay, endeavoured and laboured to change, alter and modify, and to cauſe to be changed, altered and modified, by the ſaid Court of Appeals, the Laws of this Province, which he was ſworn to adminiſter, and aſſumed legiſlative authority, and by the ſaid regulations impoſed illegal burthens and reſtraints upon His Majeſty's ſubjects in the exerciſe of their legal rights, and attributed to the ſaid Court unconſtitutional and illegal powers and authority, altogether inconſiſtent with the duties of the ſaid Court, and ſubverſive of the liberty and juſt and legal rights of His Majeſty's ſubjects in this Province.

FOURTHLY.—That the ſaid *Jonathan Sewell*, being Chief Juſtice of this Province, and as ſuch preſiding in His Majeſty's Court of King's Bench for the Diſtrict of *Quebec*, in purſuance of the traitorous and wicked purpoſes aforeſaid, did, in the Term of October, in the year of our Lord one thouſand eight hundred and nine, make and publiſh, and cauſe to be made and publiſhed, by the ſaid laſt mentioned Court, various regulations, under the name of "*Rules and Orders of Practice,*" repugnant and contrary to Law, by which regulations the ſaid *Jonathan Sewell*, in ſo far as in him lay, endeavoured and laboured to change, alter and modify, and cauſe to be changed, altered and modified, by the ſaid laſt mentioned Court, the Laws of this Province, which he was ſworn to adminiſter, and aſſumed legiſlative authority, and by the ſaid regulations impoſed illegal burthens and reſtraints upon His Majeſty's ſubjects in the exerciſe of their legal rights, and thereby attributed to the ſaid laſt mentioned Court unconſtitutional and illegal powers and authority, altogether inconſiſtent with the duties of the ſaid Court, and ſubverſive of the liberty and juſt and legal rights of His Majeſty's ſubjects in this Province.

FIFTHLY.—That the ſaid *Jonathan Sewell*, being ſuch Chief Juſtice and Preſident of the Provincial Court of Appeals, as aforeſaid, and as well

well by the duties as the oaths of his Offices, bound to maintain, ſupport and adminiſter the Laws of this Province, and award juſtice to His Majeſty's ſubjects, according to the ſaid Laws, hath nevertheleſs, in contempt of the ſaid Laws, and in violation of his ſaid duty and oaths, ſet aſide the ſaid Laws, and ſubſtituted his will and pleaſure inſtead thereof, by divers unconſtitutional, illegal, unjuſt and oppreſſive rules, orders and judgments, which he hath made and rendered, to the manifeſt injury and oppreſſion of His Majeſty's ſubjects in this Province, and in ſubverſion of their moſt important political and civil rights.

SIXTHLY.—That the ſaid *Jonathan Sewell*, being Chief Juſtice, as aforeſaid, and alſo Speaker of the Legislative Council of this Province, and Chairman of His Majeſty's Executive Council therein, did, by falſe and malicious ſlanders againſt His Majeſty's Canadian Subjects, and the Aſſembly of this Province, poiſon and incenſe the mind of Sir *James Craig*, being Governor in Chief of this Province, againſt them, and miſlead and deceive him in the diſcharge of his duties as ſuch Governor, and did, on the fifteenth day of May, in the year of our Lord one thouſand eight hundred and nine, adviſe, counſel, and induce the ſaid Sir *James Craig*, being Governor in Chief as aforeſaid, and being under the influence of the falſe and pernicious ſuggeſtions of the ſaid *Jonathan Sewell*, as aforeſaid, to diſſolve the Provincial Parliament, without any cauſe whatever, to palliate or excuſe that meaſure; and did alſo counſel, adviſe, and induce the ſaid Sir *James Craig*, to make and deliver on that occaſion a Speech, wherein the Conſtitutional rights and privileges of the Aſſembly of Lower Canada were groſsly violated, the Members of that body inſulted, and their conduct miſrepreſented.

SEVENTHLY.—That the ſaid *Jonathan Sewell*, being ſuch Chief Juſtice, Speaker of the Legislative Council and Chairman of the Executive Council as aforeſaid, in purſuance of his traitorous and wicked purpoſes aforeſaid, and intending to oppreſs His Majeſty's Subjects and prevent all oppoſition to his tyrannical views, did counſel and adviſe the ſaid Sir *James Craig*, being Governor in Chief as aforeſaid, to remove and diſmiſs divers loyal and deſerving Subjects of His Majeſty from Offices of profit and honour, who were accordingly ſo removed and diſmiſſed, without the ſemblance of reaſon to juſtify it, but merely becauſe they were inimical, or ſuppoſed to be inimical, to the meaſures

and policy promoted by the ſaid *Jonathan Sewell*, and in order, in one inſtance, to procure the advancement of his brother.

EIGHTHLY.—That the ſaid *Jonathan Sewell*, in order in the ſtrongeſt manner to mark his contempt for the liberties and rights of His Majeſty's Subjects in this Province, and his diſreſpect for their Repreſentatives, and for the Conſtitution of this Province, did in the Summer of the year one thouſand eight hundred and eight, among other removals and diſmiſſals from office as aforeſaid, counſel, adviſe, and induce the ſaid Sir *James Craig*, being Governor in Chief, as aforeſaid, to diſmiſs *Jean Antoine Panet*, Eſquire, who then was and during fifteen years preceding, had been, and ſtill is Speaker of the Aſſembly of Lower Canada, and in the full enjoyment of the eſteem and confidence of his Country, from His Majeſty's Service as Lieutenant Colonel of a Battalion of Militia, in the City of Quebec, without any reaſon to palliate or excuſe ſuch an Act of injuſtice.

NINTHLY.—That the ſaid *Jonathan Sewell*, being ſuch Chief Juſtice, Speaker of the Legiſlative Council, and Chairman of the Executive Council as aforeſaid, regardleſs of the dignity and duties of his high offices, and in purſuance of his traitorous and wicked purposes aforeſaid, did, by an undue exerciſe of his official influence, in the month of March in the year of our Lord one thouſand eight hundred and ten, perſuade and induce *Pierre Edouard Desbarats*, Printer of the laws of this Province, to eſtabliſh a News Paper, under the name of the "*Vrai Canadien*," to promote his factious views, and for the purpoſe of calumniating and vilifying part of his Majeſty's Subjects, and certain Members of the Aſſembly of this Province, who were obnoxious to the ſaid *Jonathan Sewell*, into which paper the ſaid *Jonathan Sewell* cauſed to be introduced various articles containing groſs libels on part of His Majeſty's Subjects, and on the Aſſembly of Lower-Canada: and that the ſaid *Jonathan Sewell* did compromit the honour and dignity of His Majeſty's Government, by pledging its ſupport to the ſaid Paper, and holding out aſſurances of its favour to thoſe by whom the ſaid Paper might be conducted and ſupported.

TENTHLY —That the ſaid *Jonathan Sewell*, being ſuch Chief Juſtice, Speaker of the Legislative Council and Chairman of the Executive Council as aforeſaid, in purſuance of his traitorous and wicked purpoſes

poſes aforeſaid, and intending to extinguiſh all reaſonable freedom of the Preſs, deſtroy the rights, liberties and ſecurity of His Majeſty's Subjects in this Province, and ſuppreſs all complaint of tyranny and oppreſſion, did in the month of March in the year of our Lord one thouſand eight hundred and ten, counſel, adviſe, promote and approve the ſending of an armed Military force to break open the dwelling Houſe and Printing Office of one *Charles Le François*, being one of His Majeſty's peaceable Subjects in the City of Quebec, and there arreſt and impriſon the ſaid *Charles Le François*, and ſeize and bring away forcibly a Printing Preſs, with various private papers; which meaſure of lawleſs violence was accordingly executed, and the ſaid Preſs and papers have ſince remained depoſited in the Court Houſe in the City of Quebec, with the knowledge and approbation, and under the eye of the ſaid *Jonathan Sewell*.

ELEVENTHLY.—That the ſaid *Jonathan Sewell*, being ſuch Chief Juſtice, Speaker of the Legislative Council and Chairman of the Executive Council of the ſaid Province, in purſuance of his traitorous and wicked purpoſes aforeſaid, with the intention of oppreſſing individuals ſuppoſed to be ſuſpicious of his character and views, and inimical to his policy, and for the purpoſe of ruining them in the public eſtimation, and preventing their re-election as Members of the Aſſembly of Lower Canada, did counſel, adviſe, promote and approve the arreſt of *Pierre Bedard*, *François Blanchet*, and *Jean Thomas Taſchereau*, Eſquires, upon the falſe and unfounded pretext of their having been guilty of Treaſonable Practices, whereby they might be deprived of the benefit of Bail, and by means of the influence derived from his high offices, under the Government, caused them to be impriſoned on the ſaid charge, in the common Gaol of the Diſtrict of Quebec, for a long ſpace of time, and at length to be diſcharged without having been brought to a trial.

TWELFTHLY.—That the ſaid *Jonathan Sewell*, availing himſelf of the influence of his ſaid Offices, in purſuance of his traitorous and wicked purpoſes aforeſaid, and in order to miſlead the Public, deceive His Majeſty's Government, and obtain pretexts for illegal and oppreſſive meaſures, inſtigated and promoted various acts of tyranny and oppreſſion ſimilar to thoſe laſt mentioned, in other parts of the province, whereby divers individuals upon the falſe pretext of having been guilty of

of treasonable practices were exposed to unjuſt proſecutions, imprisoned and oppressed and one of them *François Corbeil*, being old and infirm, was by the rigour of his imprisonment deprived of life, and whereby general alarm and apprehension were excited in His Majeſty's Subjects.

THIRTEENTHLY.—That the said *Jonathan Sewell*, being Chief Juſtice, Speaker of the Legiſlative Council, and Chairman of the Executive Council as aforesaid, in pursuance of his traitorous and wicked purposes aforesaid, on the twenty first day of March, in the year of our Lord one thousand eight hundred and [illegible], being a time when profond tranquillity prevailed in the province, and when no murmurs were heard, or discontents felt, other than those produced by the tyrannic and oppressive measures previously adopted by the advice of the said *Jonathan Sewell*, and when the loyalty of His Majeſty's subjects and their attachment to his Government were, nevertheless, unimpaired, did maliciously, traitorously, and wickedly infuse into the mind of the said Sir *James Craig*, being Governor in Chief, as aforesaid, the moſt false and unfounded suspicions and alarms, respecting the disposition and intentions of His Majeſty's Canadian subjects; and did counsel, advise, and induce the said Sir *James Craig*, to issue a Proclamation, extraordinary and unprecedented as well in style as in matter, wherein the arbitrary, unjuſt, and oppressive imprisonment of the said *Pierre Bedard*, *François Blanchet*, and *Jean Thomas Taschereau*, was referred to in such manner, as might induce a belief of their Guilt, and excite the greateſt *odium* againſt them, and wherein such statements were made as implied that the Province was in a state approaching open insurrection and rebellion, whereby the character of His Majeſty's Canadian subjects was moſt falsely calumniated, great injuſtice done to private individuals, and foreign states may have been drawn, and there is the greateſt reason to believe from subsequent events were drawn, into a belief of such disloyalty in His Majeſty's Canadian subjects as would render the Province an easy conqueſt.

FOURTEENTHLY.—That the said *Jonathan Sewell*, being such Chief Juſtice as aforesaid, in pursuance of his traitorous and wicked purposes aforesaid, did labour and endeavour, by means of his official influence, to extend and confirm the unfounded imputations made, and alarm excited by the said Proclamation, and in the Term of the Court of Criminal

minal Jurisdiction held in the said month of March, one thousand eight hundred and ~~five~~, read the said Proclamation in open Court, for the purpose of influencing the minds of the Grand and Petit Juries, in the exercise of their respective duties.

FIFTEENTHLY.—That the said *Jonathan Sewell*, being such Chief Justice, Speaker of the Legislative Council, and Chairman of the Executive Council as aforesaid, in pursuance of his traitorous and wicked purposes aforesaid, hath laboured and endeavoured to produce in His Majesty's Government an ill opinion of His Majesty's Canadian Subjects, with a view to oppress them, and favour the progress of American influence in this Province, and hath traitorously and wickedly abused the power and authority of his high offices, to promote the advantageous establishment of Americans, being Subjects of the Government of the United-States of America, in this Province, and to pave the way for American predominance therein, to the great prejudice and injury of His Majesty's Canadian Subjects, and with a view to the subvervion of His Majesty's Government.

SIXTEENTHLY.—That the said *Jonathan Sewell*, influenced by a desire to accelerate a political connexion of this Province, with part of the United-States of America, and to deprive His Majesty's Canadian Subjects of their present Constitution and Laws, did in or about the month of January, in the year of our Lord one thousand eight hundred and nine, enter into a base and wicked confederacy with one *John Henry*, an adventurer of suspicious character, for the purpose of sowing and exasperating dissention among the Subjects of the Government of the said United-States, and producing among them insurrection and rebellion, and a consequent dismemberment of the union, and in furtherance of the objects of the said confederacy, did, by artful and false representations, counsel, advise and induce Sir James Craig, being Governor in Chief of this Province, to send the said *John Henry* on a mission to the said United-States, whereby the attainment of the views of the said *Jonathan Sewell* was to be promoted, and the said *Jonathan Sewell* became and was a channel for the correspondence of the said *John Henry*, respecting his mission aforesaid: by which conduct the said *Jonathan Sewell* hath exposed His Majesty's Government to imputations reflecting on its honour, and hath rendered himself unworthy of any place of trust under His Majesty's Government.

SEVEN-

SEVENTEENTHLY.—That the ſaid *Jonathan Sewell* being ſuch Chief Juſtice, Speaker of the Legiſlative Council, and Chairman of the Executive Council as aforeſaid, hath laboured and ſtill doth labour to promote diſunion and animoſity between the Legiſlative Council and Aſſembly of this Province, and hath exerted his influence as Speaker as aforeſaid to prevent the paſſing, in the ſaid Council, of Salutary Laws, which had been paſſed in the ſaid Aſſembly, and hath during the preſent war with the United-States of America fomented diſſention among His Majeſty's Subjects in this Province, and endeavoured, by various arts and practices, to prevent a reliance on the Loyalty and Bravery of His Majeſty's Canadian Subjects, and produce a want of confidence in the adminiſtration of His Majeſty's Government, and thereby weaken its exertions.

All which crimes and misdemeanors, above mentioned, were done and committed by the ſaid *Jonathan Sewell*, Chief Juſtice of the Province of Lower Canada, whereby he the ſaid *Jonathan Swell*, hath traitorously and wickedly and maliciously laboured to alienate the Hearts of His Majeſty's ſubjects in this province from His Majeſty, and to cauſe a diviſion between them, and to ſubvert the conſtitution and Laws of this Province, and to introduce an arbitrary and tyrannical Government, contrary to his own knowledge, and the known Laws of this province: and thereby he the ſaid *Jonathan Sewell*, hath not only broken his own oath but alſo as far as in him lay, broken the King's oath to his people, whereof the ſaid *Jonathan Sewell*, repreſenting His Majeſty in ſo high an Office of Juſtice, had in this province the cuſtody: For all which the ſaid commons do impeach the ſaid *Jonathan Sewell*; hereby reſerving to themſelves the liberty of exhibiting at any time hereafter any other accuſation or impeachment againſt the ſaid *Jonathan Sewell*, and adopting ſuch conclusions and prayer upon the premiſes, as law and Juſtice may require.

Heads

Heads of Impeachment of *James Monk*, Eſquire, Chief Juſtice of His Majeſty's Court of King's Bench for the Diſtrict of *Montreal*, in the Province of *Lower-Canada*, by the Commons of *Lower-Canada*, in this preſent Provincial Parliament aſſembled, in their own name, and in the name of all the Commons of the ſaid Province.

FIRST.—That the ſaid *James Monk*, Chief Juſtice of His Majeſty's Court of King's Bench for the Diſtrict of Montreal, in the Province of Lower-Canada, hath traitorouſly and wickedly endeavoured to ſubvert the Conſtitution and eſtabliſhed Government of the ſaid Province, and inſtead thereof to introduce an arbitrary tyrannical Government, againſt Law, which he hath declared by traitorous and wicked opinions, counſels, conduct, judgments, practices and actions.

SECONDLY.—That in purſuance of thoſe traitorous and wicked purpoſes, the ſaid *James Monk* hath diſregarded the authority of the Legiſlature of this Province, and in the Courts of Juſtice wherein he hath preſided and ſat, hath uſurped powers and authority which belong to the Legiſlature alone, and made regulations ſubverſive of the Conſtitution and Laws of this Province.

THIRDLY.—That the ſaid *James Monk*, being Chief Juſtice of the ſaid Court of King's Bench for the Diſtrict of Montreal, and Preſident of the Provincial Court of Appeals, in cauſes appealed from the Court of King's Bench for the Diſtrict of Quebec, in purſuance of the traitorous and wicked purpoſes aforeſaid, did, on the nineteenth day of January, in the year of our Lord one thouſand eight hundred and nine, make, conſent to, concur in, approve and publiſh, and cauſed to be made and publiſhed, by the ſaid Court of Appeals, various regulations, under the name of "*Rules and Orders of Practice*," in the Provincial Court of Appeals, repugnant and contrary to the Laws of this Province, whereby the ſaid *James Monk* wickedly and traitorouſly, in ſo far as in him lay, endeavoured and laboured to change, alter and modify, and cauſe to be changed, altered and modified, by the ſaid Court of Appeals, the Laws of this Province, which he was ſworn to adminiſter, and aſſumed legiſlative authority, and by the ſaid Regulations impoſed illegal burthens and reſtraints upon His Majeſty's ſubjects in the exerciſe of their legal

 rights,

rights, and attributed to the ſaid Court unconſtitutional and illegal powers and authority, altogether inconſiſtent with the duties of the ſaid Court, and ſubverſive of the liberty and juſt and legal rights of His Majeſty's ſubjects in this Province.

FOURTHLY.—That the ſaid *James Monk*, being Chief Juſtice of the ſaid Court of King's Bench for the Diſtrict of Montreal, as aforeſaid, in purſuance of the traitorous and wicked purpoſes aforeſaid, did, in in the term of February, in the year of our Lord one thouſand eight hundred and eleven, make and publiſh, and cauſe to be made and publiſhed by the ſaid laſt mentioned Court, various Regulations, under the name of "Rules and Orders of Practice," repugnant and contrary to the laws of this Province, by which Regulations the ſaid *James Monk*, in ſo far as in him lay, endeavoured and laboured to change, alter and modify, and to cauſe to be changed, altered and modified, by the ſaid laſt mentioned Court, the Laws of this Province, which he was ſworn to adminiſter, and aſſumed Legislative authority, and by the ſaid Regulations, impoſed illegal burthens and reſtraints upon His Majeſty's Subjects, in the exerciſe of their legal rights, and thereby attributed to the ſaid laſt mentioned Court unconſtitutional and illegal powers and authority, altogether inconſiſtent with the duties of the ſaid Court, and ſubverſive of the liberty, and juſt and legal rights of His Majeſty's Subjects in this Province.

FIFTHLY.—That the ſaid *James Monk*, being ſuch Chief Juſtice and Preſident of the Court of Appeals as aforeſaid, and as well by the duties as the oaths of his offices bound to maintain, ſupport and adminiſter the laws of this Province, and award Juſtice to His Majeſty's Subjects, according to the ſaid laws, hath, nevertheleſs, in contempt of the ſaid laws, and in violation of his ſaid duties and oaths, ſet aſide the said laws, and ſubſtituted his will and pleaſure inſtead thereof, by divers unconſtitutional, illegal, unjuſt and oppreſſive Rules, Orders and Judgments, which he hath made and rendered, to the manifeſt injury and oppreſſion of His Majeſty's Subjects in this Province, and in ſubverſion of their moſt important political and civil rights.

SIXTHLY.—That the ſaid *James Monk*, being ſuch Chief Juſtice as aforeſaid, in purſuance of his traitorous and wicked purpoſes aforeſaid, hath, in the exerciſe of his Judicial powers, openly and publicly aſcribed

bed to the ſaid Court of King's Bench, the power of altering, changing and modifying the laws of this Province, and hath alleged and declared, that ſuch power had been recognized by all the Judges of the land in the Provincial Court of Appeals, and on ſuch his falſe, traitorous and wicked opinions and declarations, hath founded judgments of the ſaid Court.

SEVENTHLY.—That the ſaid *James Monk*, being ſuch Chief Juſtice as aforeſaid, and bound by the laws of this Province to protect and maintain the perſonal liberty of His Majeſty's Subjects, and relieve them from illegal and unjuſt impriſonment, hath, nevertheleſs, contrary to his duty, and in contempt of the ſaid laws, denied Writs of *Habeas Corpus* to perſons legally entitled to them, and thereby deprived His Majeſty's Subjects of their deareſt and moſt important rights, and hath wilfully oppreſſed them.

EIGHTHLY —That the ſaid *James Monk*, being ſuch Chief Juſtice as aforeſaid, hath, in certain caſes, promoted, counſelled and adviſed Criminal Proſecutions, and hath afterwards exerciſed his Judicial powers, as ſuch Chief Juſtice, and hath ſat in Judgment upon ſuch Proſecutions.

All which crimes and miſdemeanors abovementioned, were done and committed by the ſaid *James Monk*, Chief Juſtice of the Court of King's Bench for the Diſtrict of Montreal, whereby he the ſaid *James Monk* hath traitorously, wickedly and maliciously laboured to alienate the hearts of His Majeſty's ſubjects in this province from His Majeſty, and to cauſe a diviſion between them, and to ſubvert the conſtitution and laws of this province, and to introduce an arbitrary and tyrannical Government, contrary to his own knowledge, and the known laws of this province: And thereby he the ſaid *James Monk* hath not only broken his own oath, but alſo, as far as in him lay, hath broken the King's Oath to his people, whereof the ſaid *James Monk*, Eſquire, repreſenting His Majeſty in ſo high an office of Juſtice, had in the ſaid Diſtrict of Montreal, the cuſtody.

For all which the ſaid commons do impeach the ſaid *James Monk*, hereby reſerving to themſelves the liberty of exhibiting at any time hereafter any other accuſation or impeachment againſt the ſaid *James*

Monk, and adopting such conclusions and prayer upon the premiſes as law and Juſtice may require.

TO HIS ROYAL HIGHNESS
THE PRINCE REGENT.

MAY IT PLEASE YOUR ROYAL HIGHNESS,

WE His Majeſty's moſt dutiful and Loyal Subjects, the Commons of Lower Canada, in Provincial Parliament assembled, do acknowledge with gratitude the many and great advantages which have been conferred on this Province by His Majeſty's wise and juſt Government. Among these, we have reason to assign the firſt place to the Excellent Conſtitution which has been imparted to His Majeſty's Canadian Subjects, whereby their civil and political rights have been secured, and conſtitutional means provided for the inveſtigation of abuses and grievances, which might, if permitted to continue without remedy, prove not less injurious to His Majeſty's Government, than to the intereſts of His Subjects.

It would have been gratifying to His Majeſty's faithful Commons, if they could have aſſured Your Royal Highness, that the beneficent intentions of His Majeſty's Government towards them had been realized in the conduct of its Officers, but, unfortunately, it has become our painful duty humbly to repreſent to Your Royal Highness that, in conſequence of abuſes of authority, which have been committed by the principal officers in the adminiſtration of Juſtice, the rights of His Majeſty's faithful subjects in this province have been violated in the moſt eſſential points.

During the preſent Seſſion of the Provincial Parliament, the attention of His Majeſty's faithful Commons has been directed to the exerciſe of an authority aſſumed by the Courts of Juſtice, under the denomination of "Rules of Practice," and we have been alarmed to find, that under that name the Courts of Juſtice have arrogated to themſelves powers which belong excluſively to the Legiſlature, and have made regulations repugnant and contrary to law. Theſe powers have been ſo extenſively and injuriously exerciſed as to affect the civil rights of

of His Majeſty's subjects in the moſt important points, and in some inſtances in the moſt oppreſſive manner; and would, if continued, deprive His Majeſty's subjects in this province of their conſtitution and Laws, and subject them to the arbitrary will and pleasure of the Judges.

We His Majeſty's Faithful Commons have found that theſe abuſes of authority have, ſince the appointment of *Jonathan Sewell*, Eſquire, to be Chief Juſtice of this Province, originated in the Provincial Court of Appeals, in which (ſuch is its vicious and defective Conſtitution) that Gentleman and *James Monk*, Eſquire, Chief Juſtice of the Court of King's Bench for the Diſtrict of Montreal, reſpectively preſide on appeals from the judgments of each other, in the Courts of Original Juriſdiction. In January 1809, thoſe Gentlemen concurred in framing Rules of Practice for the Court of Appeals, in which the illegal aſſumption of authority complained of was exerciſed, and having thus pledged the Court of laſt reſort for the maintenance of that aſſumption, they afterwards in the Courts of original Juriſdiction, in which they reſpectively preſide, aſſumed like authority, and made unconſtitutional, illegal and oppreſſive regulations in thoſe Courts, which they concur in maintaining, and to which their united influence gives entire effect, to the ſubverſion of the Conſtitution and of the Laws of the Land.

However anxious we have been to direct our undivided attention to meaſures, which might ſtrengthen His Majeſty's Government in this Province, and increaſe its energies, for the defence of the Province againſt the Enemy, we could not poſtpone the conſideration of abuſes of ſuch enormous magnitude, which, if not corrected, would deprive the Inhabitants of this Province of all the advantages for the preſervation of which, againſt the open attacks of the Enemy they have already incurred, and are ſtill determined to incur the greateſt ſacrifices. We His Majeſty's Faithful Commons have therefore been under the neceſſity of reducing into ſpecific charges, under the name of Heads of Impeachment, the criminal conduct which we impute to the ſaid *Jonathan Sewell* and *James Monk*, Esquires, and theſe embrace other crimes and misdemeanours of thoſe public Officers, for which His Majeſty's Faithful Commons hold them reſponſible.

In what relates to the ſaid *Jonathan Sewell*, Eſquire, we have felt it to be our duty, when arraigning his judicial conduct, to charge him alſo with various acts of tyranny and oppreſſion in the adminiſtration of the Government of this Province, and with meaſures injurious to the honour and intereſt of His Majeſty's Government, of which we believe, and will prove, him, by his pernicious counſels, to have been the author.

Having inveſtigated and aſcertained the abuſes and grievances which are the ſubjects of complaint, and founded determinate accuſations on them, We, His Majeſty's Faithful Commons, have done all to which we are competent, for the attainment of juſtice: it is only from the power of His Majeſty's Government, that we can hope for relief and redreſs, and our confidence in the juſtice and wiſdom of your Royal Highneſs, aſſures us, that our humble appeal to that power will not be ineffectual.

Wherefore, we His Majeſty's Faithful Commons of this Province, moſt reſpectfully beg leave to be permitted to lay at the feet of Your Royal Highneſs, the grounds of our complaint and accuſation againſt the ſaid *Jonathan Sewell* and *James Monk*, Eſquires, and pray that in conſideration of the premiſes they may be removed from their reſpective Offices, and that the authority of His Majeſty's Government may be interpoſed in ſuch way as, in Your Royal Highneſs's wiſdom, may appear neceſſary for bringing them to juſtice.

The above repreſentation referred to in the Report of a Special Committee, dated the 25th February, 1814.

(Signed) J. STUART, Chairman.

Debates enſued, and it was finally

ORDERED, That the queſtion of concurrence be now put on the Heads of Impeachment againſt *Jonathan Sewell*, Eſquire, ſeparately.

Accordingly, the queſtion was put ſeparately upon the ſaid Heads of Impeachment, and on the concluſion and the title thereof. A diviſion having enſued upon each, they were carried in the affirmative, and it was

RE-

RESOLVED, That this Houſe doth concur with the Committee, in the ſaid Heads of Impeachment of *Jonathan Sewell*, Eſquire, Chief Juſtice of the Province of *Lower-Canada*, and in the concluſion and title thereof.

It was then

ORDERED, That the queſtion of concurrence be now put on the Heads of Impeachment againſt *James Monk*, Eſquire, ſeparately.

Accordingly, the queſtion was put ſeparately on the ſaid Heads of Impeachment, and on the concluſion and title thereof A diviſion having enſued upon each, they were carried in the affirmative, and it was

RESOLVED, That this Houſe doth concur with the Committee, in the ſaid Heads of Impeachment of *James Monk*, Eſquire, Chief Juſtice of the Court of King's Bench for the Diſtrict of *Montreal*, and in the concluſion and title thereof.

After which it was

ORDERED, That the queſtion of concurrence be now put on the Repreſentation to His Royal Highneſs the Prince Regent, paragraph by paragraph.

The queſtion was accordingly put upon the paragraphs ſeparately, the Houſe divided upon each, they were carried in the affirmative, and it was

RESOLVED, That this Houſe doth concur with the Committee, in the ſaid Repreſentation to His Royal Highneſs the Prince Regent.

It was then

RESOLVED, That a Committee of five Members be appointed, to prepare an Addreſs to His Excellency the Governor in Chief, to inform His Excellency of the proceedings of this Houſe againſt the ſaid *Jonathan Sewell* and *James Monk*, Eſquires, and to pray that His Excellency will be pleaſed to tranſmit the ſaid Heads of Impeachment and Repreſentation to His Ma-

Majeſty's Miniſters, to be laid before His Royal Highneſs the Prince Regent; And alſo for the purpoſe of repreſenting to His Excellency the neceſſity of ſuſpending the ſaid *Jonathan Sewell* and *James Monk*, from their Offices, until His Majeſty's pleaſure may be known, and praying His Excellency will ſuſpend them accordingly.

ORDERED, That Mr. *Stuart*, Mr. *Papineau*, Mr. *Bourdages*, Mr. *Lee*, and Mr. *Dénechau*, do compoſe the ſaid Committee.

The Committee retired, and ſome time after,

Mr. *Stuart* reported the Addreſs to His Excellency the Governor in Chief, purſuant to the foregoing Reſolution, and the Addreſs was read, and is as followeth:

TO HIS EXCELLENCY

SIR GEORGE PREVOST, BARONET,

Captain-General and Governor in Chief in and over the Provinces of Lower-Canada, Upper-Canada, Nova-Scotia, New-Brunſwick, and their ſeveral dependencies, Vice-Admiral of the ſame, Lieutenant General and Commander of all His Majeſty's Forces in the ſaid Provinces of Lower-Canada and Upper-Canada, Nova-Scotia and New Brunſwick, and their ſeveral dependencies, and in the Islands of Newfoundland, Prince Edward, Cape Breton and Bermuda, &c. &c.

MAY IT PLEASE YOUR EXCELLENCY,

WE His Majeſty's moſt dutiful and Loyal Subjects, the Commons of Lower-Canada, in Provincial Parliament aſſembled, beg leave to inform Your Excellency, that we have found ourſelves conſtrained by a ſenſe of duty to direct our attention to certain abuſes of a dangerous nature in the Courts of Juſtice, in which *Jonathan Sewell*, Eſquire, Chief Juſtice of the Province, and *James Monk*, Eſquire, Chief Juſtice of the Court of King's Bench for the District of Montreal reſpectively preſide, and to high offences committed by them, upon all which we have framed Heads of Impeachment againſt the ſaid *Jonathan Sewell* and *James Monk*, Eſquires, and an Humble Repreſentation to His Royal Highneſs the Prince Regent, which we have

have now the honour of presenting to Your Excellency, and pray that Your Excellency will be graciously pleased to transmit them to His Majesty's Ministers, to be laid before His Royal Highness the Prince Regent.

Considering the nature of the Charges which it has been our duty to exhibit against the said *Jonathan Sewell* and *James Monk*, Esquires, we deem it incumbent upon us most respectfully to represent to Your Excellency that it is not consistent with the honour of His Majesty's Government or the interests of his Subjects, that the said *Jonathan Sewell* and *James Monk*, Esquires, do continue in the execution of their respective Offices, while the said charges are depending against them, and we humbly pray that Your Excellency will be graciously pleased to suspend them from their said Offices until His Majesty's pleasure may be known.

It was then moved that the House do concur in the said Address.

The House divided upon the question, and it being carried in the affirmative, it was

RESOLVED, That this House doth concur in the said Address.

ORDERED, That the said Address be engrossed.

RESOLVED, That the said Address be presented to His Excellency the Governor in Chief by the whole House.

ORDERED, That Mr *Stuart*, Mr. *Bourdages*, Mr. *Larue*, Mr. *Huot*, Mr. *Blanchet*, Mr. *Lee*, Mr *Gauvreau*, and Mr. *Papineau*, do wait upon His Excellency the Governor in Chief, to know at what time His Excellency will be pleased to receive this House with the said Address.

Monday, 28*th February*, 1814.

MR. *Stuart*, accompanied by the other Messengers, reported, that they had waited upon His Excellency the Governor in Chief,

 pursuant

purſuant to the foregoing Order, and that His Excellency had been pleaſed to ſay that he will receive this Houſe with its Addreſs on Thurſday next, at one o'clock in the afternoon.

HOUSE OF ASSEMBLY,

Thurſday, 3d March, 1814.

AT the hour appointed, Mr. Speaker and the Houſe went up to the Caſtle of St. Lewis with the Addreſs of this Houſe.

And being returned,

Mr. Speaker reported, that the Houſe had attended upon His Excellency the Governor in Chief with their Addreſs, to which His Excellency was pleaſed to make the following anſwer:

"I ſhall take an early opportunity of tranſmitting to His Majeſty's Miniſters your Addreſs to His Royal Highneſs the Prince Regent, together with the Articles of Accuſation which have been preferred by you againſt the Chief Juſtice of the Province, and the Chief Juſtice of the Diſtrict of Montreal. But I do not think it expedient to ſuſpend the Chief Juſtice of the Province and the Chief Juſtice of the Diſtrict of Montreal, from their Offices, upon an Addreſs to that effect from one Branch of the Legiſlature alone, founded on Articles of Accuſation on which the Legiſlative Council have not been conſulted, and in which they have not concurred."

It was then

RESOLVED, That the charges exhibited by this House against *Jonathan Sewell* and *James Monk*, Esquires, were rightly denominated "*Heads of Impeachment.*"

RESOLVED, That it is the unquestionable constitutional right of this House to offer its humble advice to His Excellency the Governor in Chief, upon matters affecting the welfare of His Majesty's

ty's subjects in this Province, without the concurrence of the Legislative Council.

RESOLVED, That it is peculiarly incumbent on this House to investigate abuses calculated to deprive His Majesty's subjects of the benefit of their Constitution and Laws, and of the pure administration of justice, and that in bringing under the view of His Excellency the Governor in Chief the gross abuses and high offences referred to in the Address to His Excellency, this House hath performed the first and most essential of its duties to the people of this Province.

RESOLVED, That it is the indubitable right of this House to exhibit accusations to which it is constitutionally competent, without consulting, or asking the concurrence of the Legislative Council, and that in framing and exhibiting the Heads of Impeachment referred to in the Address to His Excellency the Governor in Chief, this House hath exercised a necessary and salutary power vested in them by the Constitution.

RESOLVED, That His Excellency the Governor in Chief, by his said Answer to the Address of this House, hath violated the constitutional rights and privileges of this House.