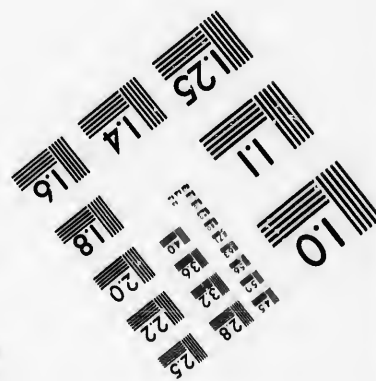
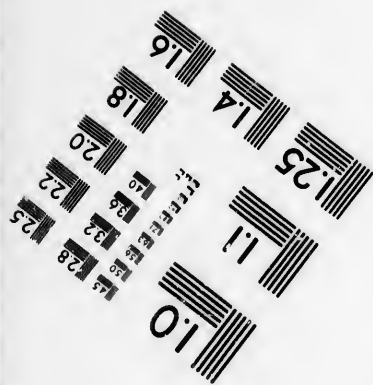
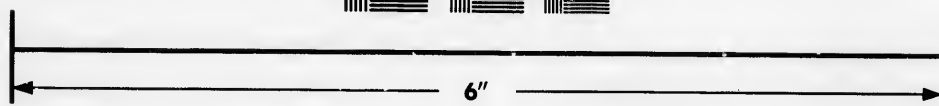
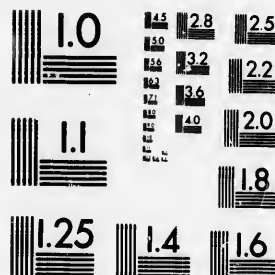


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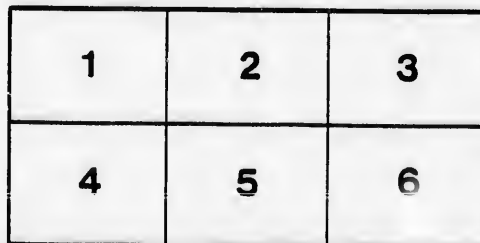
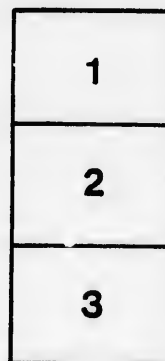
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6

1870

OBSERVATIONS ON A POINT OF LAW.

The Acts of Parliament in force in this Province may be divided into two classes. In the first, are all Acts of Parliament made expressly for the Colonies and Plantations, or for this Province in particular.

The second class is composed of Acts of Parliament not originally enacted for the Colonies; and which *proprio vigore*, were not binding in this Province, but have been introduced into it, by Acts of Parliament, subject to be repealed or altered by the then existing Provincial Legislature.

The relation of superiority and dependance between the Metropolis and its Colonies or Provinces, does not permit the supposition of a Colonial or Provincial Legislature having (otherwise than by permission from Parliament) a right to repeal, alter or suspend the Acts of Parliament: for such a power would make the Colonial Legislature equal to Parliament, and there would be a multitude of Legislatures all equally supreme and sovereign in one and the same state. In fact, the Legislature of Lower Canada never claimed to exercise this power without the express permission of Parliament; and this permission was actually given to the Canadian Legislature by the Acts of 1774 and 1791, in relation to Acts of Parliament of the second class, and for this obvious reason, that those acts, originally made for England, were likely to prove in many respects inapplicable to the wants, manners and circumstances of Canada; and that a power in the Colony itself to modify those laws was a necessary corrective to their promiscuous introduction.

But the same permission was never given in relation to Acts of Parliament made expressly for the Colonies or for this Province; and a power to modify those Acts of Parliament, of the first class, was never exercised or even claimed by the Legislature of Lower Canada.

Such were the well understood and admitted supreme powers of Parliament; such the more limited but very great powers of the Lower Canada Legislature, when the latter was suspended by the Act of Parliament, 1 Victoria, chap. 9. By this Act a temporary legislature is erected, with power to make laws and ordinances, such as might have been made by the suspended Legislature. The Governor and Special Council are thus entrusted with the powers of legislation that belong to the suspended Legislature, but no more. If, therefore, the suspended Legislature had no power to suspend, alter or repeal Acts of Parliament made expressly for the Colonies or for Canada, it is manifest that the Governor and Special Council have not that power. It is a power which cannot belong to a Colonial Legislature without express permission of Parliament; and this permission not having been given to the suspended Legislature, is clearly not given to the Governor and Special Council.

Indeed, it is quite manifest that the legislative powers of the Governor and Special Council, are less extensive than those of the suspended Legislature; for the statute after conveying to the Governor and Special Council the powers of the suspended Legislature,

contains a proviso for qualifying and restraining the powers so conferred. This proviso restrains the Governor and Special Council, *Firstly*, From altering the constitution or powers of the suspended Legislature ; *Secondly*, From levying new taxes, and *Thirdly*, From suspending or altering any provision of any Act of the Parliament of Great Britain or of the United Kingdom, or any Act of the suspended Legislature for suspending or altering any *such* Act of Parliament.

It is the proper province of a proviso or saving in a statute, to qualify and restrain the purview to which it relates ; and, accordingly, as the suspended Legislature had power to alter its own constitution and powers, and the same power would have been conveyed to the Governor and Special Council by the general words of the purview, the proviso restrains it in this particular, and the same observation applies to the power of levying new taxes. The concluding part of the proviso restrains the Governor and Special Council from suspending, altering or repealing certain laws in force in the Province, and particularly any Acts of the Parliament of Great Britain or of the United Kingdom. Does this restriction relate to the Acts of Parliament made expressly for the Colonies or for Canada, as is pretended by some ? I think not, and that it refers to such Acts of Parliament only as might have been altered, suspended or repealed by the suspended Legislature ; and my reasons are, 1st. That as the suspended Legislature had clearly and avowedly no power to modify any Act of Parliament made expressly for the Colonies or for this Province, the Governor and Special Council having by the general purview of the Act no other powers than those of the suspended Legislature, a proviso could not be required to restrain them from exercising higher powers not included in the purview of the Act and inconsistent with the existing relation between a Colony and its Metropolis, as it is against all rule so to construe a statute as that any clause, sentence or word therein shall be superfluous, void or insignificant, if it can be avoided.

2ndly. But as the suspended Legislature had the power of altering, repealing or suspending, and did in fact more than once alter, repeal and suspend several Acts of Parliament of the second class, the same power must have been held by the Governor and Special Council, if Parliament had not most wisely imposed a salutary restriction in this proviso, whereby an extraordinary, unconstitutional and temporary Legislature is denied the power of convulsing the country by repealing or suspending laws to which the mass of the population is accustomed and fondly attached. The proviso thus understood has a reasonable meaning ; but, applied to Acts of Parliament of the first class it would be useless, unmeaning and derogatory to the wisdom of Parliament.

We read at the end of the proviso, what will certainly appear very decisive to an unbiassed mind. The Governor and Special Council are further restricted from suspending, altering or repealing any Act of the suspended Legislature, made for repealing or altering any *such* Act of Parliament ; not *such* undoubtedly, as the suspended Legislature could neither repeal nor alter, but *such* most evidently as that Legislature had power to alter and repeal, and did in fact alter and repeal, namely, Acts of the second class, *such* as the Governor and Special Council are expressly restricted from suspending or altering.

