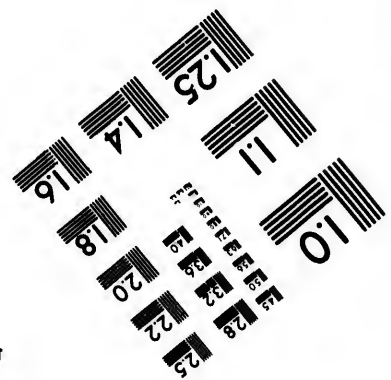
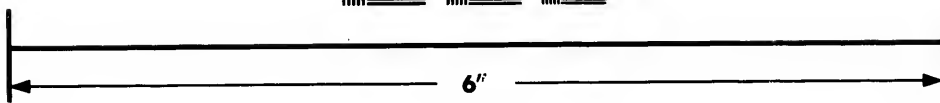
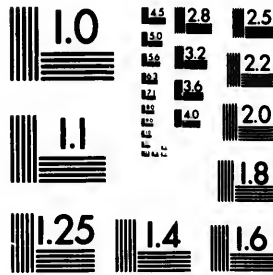


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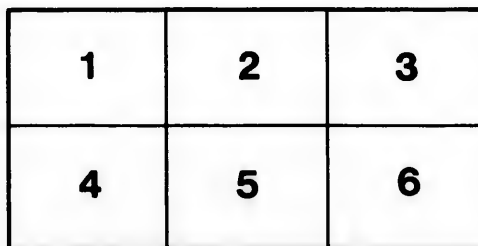
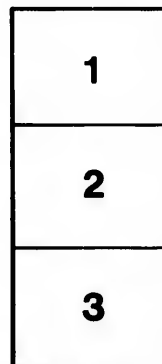
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ADDITIONAL PAPERS

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Province of Q U E B E C K :

B E I N G

A N   A P P E N D I X

T o   t h e   B O O K   e n t i t l e d ,

*“ An Account of the Proceedings of the British  
“ and other Protestant Inhabitants of the  
“ Province of Quebec in North America,  
“ in order to obtain a House of Assembly in  
“ that Province.”*

*Masereel*



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## ADDITIONAL PAPERS

CONCERNING THE

### Province of QUEBECK.

**I**T has been shewn, in the foregoing account of the proceedings of the British and other Protestant inhabitants of the province of Quebeck, in the latter end of the year 1773, in order to obtain a house of assembly, that they solicited the French, or Canadian, inhabitants of the province to join with them in making the necessary applications for that purpose. And it has been likewise shewn that they were willing to accept of an assembly composed indifferently of Protestants and Roman-Catholicks, if it should please his Majesty in his royal wisdom to constitute an assembly in that manner. But they could not be prevailed on by the Canadian, or French, inhabitants of the province (who



also wished to have an assembly,) to join with them in *desiring* his Majesty to depart from what they conceived to be the ancient and fundamental maxims of the British government, and intirely to overlook the difference of religion in the constitution of the assembly. This they thought would be highly improper for two reasons. In the first place, they did not approve the measure itself, or conceive it to be necessary either to the ends of justice or good policy. They thought that it was no more a hardship to exclude a Canadian from a seat in the assembly of Canada on account of his being a Roman-Catholick, than it was to exclude an Englishman from a seat in the English parliament, or an Irishman from a seat in the Irish parliament, on the same account. They could not conceive that a conquered people, who had lately been in arms against the crown, of a different language and manners, and who lately had lived under different laws, from his Majesty's other subjects, had any right to expect greater indulgences and exemptions from those disabilities which, not their birth or country, but their profession of the Roman-Catholick religion (which is so hostile to the general spirit of the British government) lay them under, than were allowed to his Majesty's ancient Irish and English Roman-Catholicks subjects, who were born under his Majesty's allegiance, and attached by habit

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habit and education to the English manners, laws, and government, with respect to all temporal matters. And therefore they thought the establishment of an assembly in the province, consisting of protestant members only, agreeable to the directions which his Majesty had been pleased repeatedly to issue for that purpose in his commissions of Governour in chief of the province successively given to the Generals Murray and Carleton, would not be an unjust measure. And they likewise had many reasons for thinking that it would not be an inexpedient or impolitic measure, nor generally disagreeable to the body of the Canadian freeholders, though it might probably be clamoured against by the Romish priests of the province and by a few Canadian lawyers and some of the noblesse residing in the towns of Quebeck and Montreal, and, perhaps, a few of the merchants of those towns to the number of a few dozens, or scores, of persons in the whole province. They had, I say, many reasons for thinking that it would not be offensive to the general body of the Canadian freeholders, provided those freeholders were permitted, (as all the English and other protestant inhabitants in the province wished them to be) to vote for the election of members of the assembly, notwithstanding their profession of the Roman-Catholick religion, though not to be elected into it themselves. Their reasons

sons for thinking so were as follows. In the first place, the English and protestant inhabitants are pretty numerous, being not fewer than three thousand souls, exclusive of the king's troops in the province, as has been found since the passing of the late Quebeck act by an enumeration that has been made of them. This number, though far short of the number of the Canadian or French inhabitants of the province, (who are thought to be 120,000, or perhaps 150,000, souls) is yet sufficiently large to afford to the Canadian freeholders a very ample choice of persons to represent them in an assembly of the province. And among them would be found many persons very well known to, and much respected by, the Canadians; I believe, I may venture to say, more so than the generality of their own noblese or gentry, or even merchants. For many protestant inhabitants have married Canadian women, who were bred in the Roman-Catholick Religion, and who for the most part still continue in the profession of it, without being in the least degree sollicitated or importuned by their husbands, or any of their husband's friends, to abandon it: which creates a familiar intercourse between those husbands and the Roman-Catholick relations of their wives. Thus, for example, Captain John Frazer, of Montreal, lately one of the Judges of the court of common-pleas for that district, and since the  
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1st of May last one of the new conservators  
 of the peace for the same district, is married  
 to a daughter of Monsieur Des Chambaud, a  
 considerable French gentleman of that place,  
 and who is owner of a valuable seigniory.  
 And another daughter of the same gentle-  
 man, who was the widow of a Monsieur De  
 Longeuil is married to Mr. William Grant,  
 a protestant Scottish merchant at Quebeck.  
 A daughter of Monsieur De Bellestre, a Ro-  
 man-Catholick gentleman of note at Mont-  
 real, who is appointed a member of the new  
 legislative council of the province, is married  
 to Major Wharton, an officer of the army.  
 A daughter of Monsieur La Corne de St. Luc,  
 another and most zealous Roman-Catholick,  
 who is also a member of the new legislative  
 council, is married to Major Campbell, ano-  
 ther officer of the army. The daughter of  
 Monsieur Beaubien, a Canadian merchant at  
 Quebeck, a most zealous Roman-Catholick,  
 is married to Monsieur l'Eveque, a French  
 protestant merchant at the same place, who is  
 a member of the legislative council. The sister  
 of a Roman-Catholick gentleman of the name  
 of Reverin is married to Mr. Antill, a native  
 of New Jersey in North America, who is a  
 protestant and practises the law at Montreal.  
 And many more such instances might be pro-  
 duced of protestants married to Roman-Ca-  
 tholic women, and who are consequently,  
 for the most part, much connected with the  
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Roman-Catholicks of their wives families. Others of the English and protestant inhabitants have gained the respect and esteem of the Canadians by their upright and disinterested behaviour as Judges of the courts of Justice, Justices of the peace, and Lawyers of ability and integrity. Thus Mr. Martehl by his upright and impartial conduct formerly as a Justice of the peace at Québec, and of late years as a Judge of the court of common-pleas at Montreal, (but more especially in the former character of a Justice of the peace) has gained the respect and confidence of the Canadians to an high degree. And the same may be said of Mr. du Calvet, a French protestant of considerable fortune and an unspotted reputation at Montreal, who has acted with great integrity and disinterestedness as a Justice of the peace in that place; and of Mr. Du Mas Saint Martin, another French protestant, that was a Justice of the peace at Montreal; and of Captain Guky, an officer on half-pay, who is retired to the country and lives at Maschiche, 18 miles to the South of Three-rivers, upon part of the seigniory which he bought, and has cultivated and improved with great industry and success, and who has executed the office of a Justice of the peace to the great advantage and satisfaction of his neighbours; and of Mr. Thomas Walker, of Montreal, while he was in the commission of the peace for that district; the

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the Canadians having always considered him as their friend and protector. And others might, I doubt not, be added to this list of upright magistrates amongst the English and protestant inhabitants of the province, who have, by their good behaviour, and the beneficial use they have made of their authority, obtained the good-will and esteem of the Canadians; though it must at the same time be confessed, that there were amongst the Justices of the peace, in the years 1768 and 1769, a few persons of a different character, and who were thought to have made a bad use of a certain civil jurisdiction, to determine small civil actions for sums of money not exceeding 3l. 15s. sterling, which was at that time annexed to that office, but which has since been separated from it by an ordinance in the year 1770. I must add to these upright protestant magistrates the two principal English lawyers in the province, Mr. Kneller, the present attorney-general of it, and Mr. Williams; who are, both of them, much known to the Canadians, and often employed and much esteemed by them; insomuch that Mr. Cugnet himself, the very acrimonious and censorious Mr. Cugnet, has declared, in a paper I have seen of his hand-writing, that he thinks them fit to be judges in the province.

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Here,

Here, therefore, are two sets of persons amongst the English and protestant inhabitants of the province, out of whom, it is probable, that the Canadian freeholders would be willing to chuse representatives to the general assembly of the province. I will now add to these a third class of persons, more numerous than both the former put together: I mean, the English merchants of Quebec and Montreal, who are engaged either in the fur or the corn-trade. The former of these employ great numbers of the Canadians to carry blankets and other woollen stuffs, and fire arms with powder and shot, and divers sorts of hard-ware, and other goods for the use of the Indians, in large birch-canoes, up the river Saint Lawrence, into lake Ontario, and the other four great lakes in the interior part of North America, (which is usually there called, *le Pâis d'en haut*, or, the upper-country,) to be exchanged with the Indians of that country for beaver, fox, and martin-skins, and other species of furs, which they bring down in the same manner to Montreal, from whence they are sent to Quebec, and there shipped for Europe.

By these adventures both the merchants of Montreal, who employ these Canadians, and the Canadians who are so employed, often get considerable sums of money: and after a few of these expeditions, made in their

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their youth, it is usual for the Canadians, who have made them and have acquired little fortunes by so doing, to leave off going upon them, and enter into a more settled course of life, and employ themselves in the clearing and improving tracts of land, which they easily obtain either by grants from the Seigniors, or by purchase, leaving the journies into the upper-country to be taken by a new set of younger adventurers. Now it is easy to see, that this intercourse between the merchants of Montreal and the Canadians they so employ, must create, during the time that it continues, a great degree of dependance of the latter on the former, and afterwards will often be the occasion of their entertaining a high respect for them, accompanied, as we may suppose, with gratitude and confidence. And, as to the corn-merchants of the towns of Quebeck and Montreal, they cannot fail of acquiring a like influence over a still greater number of the Canadian freeholders. For, as corn is the staple commodity of the country, (five hundred thousand bushels of wheat being annually exported from it,) more persons are concerned in selling it to the merchants who export it, than are engaged in the fur-trade. And these merchants (of whom the greater part are Englishmen) go about the most fertile parts of the province in the spring of the year, about the month



of May, and contract with the Canadian freeholders for such quantities of their corn as they think they shall be able to spare them, to be delivered to them in the months of August and September, at certain prices agreed on between them, which are very considerable, and greatly exceed the prices given for corn in the time of the French government: and on these occasions the English merchants are apt to give them greater prices than the French merchants are, for the most part, willing to give them for it at this day, the latter being more cautious and timid in their manner of carrying on trade than the English merchants. This is a very great source of influence to the English merchants over the Canadian freeholders, who, by that means, not only come to be personally acquainted with them, but to consider them as their patrons and protectors, being the persons by whose means they are daily improving their fortunes. Accordingly they always speak of these merchants with great respect and gratitude, and seem to entertain a high opinion of their abilities and importance in the province. From amongst these merchants, therefore, both of fur and corn, they would probably be much inclined to chuse their representatives to the assembly, and would often chuse them even in preference to their own countrymen, if

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Roman-Catholicks were permitted to sit in the assembly.

For these reasons the English and Protestant inhabitants of the province were inclined to think, that the institution of a Protestant assembly would not be thought an oppressive measure by the generality of the Canadian freeholders, though it would be the subject of clamour amongst the Canadian Seigniors and other gentry, and the French merchants in the towns of Quebeck and Montreal, together with the French lawyers and priests, who would, probably, on such occasion, call themselves the Canadian people, and pretend that their own sentiments were those of all their countrymen, as they did in their petition to the king's Majesty, in December 1773, (see the above account, page 112.) notwithstanding it was obtained in a clandestine manner, and without the knowledge of the greater part of the Canadian people, and was signed by only 65 persons in the district of Montreal (including several of the same families, and some boys) and that too in consequence of the utmost exertion of the influence of the bishop and his party.

And further, the English and protestant inhabitants of the province were the more inclined to be of this opinion, to wit, that a protestant

protestant assembly might be established in the province without disgusting the bulk of the Canadian inhabitants, because they had found, by the experience of nine or ten years, that the said inhabitants were perfectly easy and satisfied under the government of the Governours and councils which his Majesty had till then established in the province, and of the Judges and Justices of the peace and other officers of government, who had till then been invested with authority in it, notwithstanding only protestants had been admitted to those offices, or been deemed capable of being admitted to them. And so far were they from being offended at the exclusion of their own former magistrates and other gentry from those offices of power, that they seemed rather to be pleased at it, as being thereby emancipated from a state of subjection to them, and would often express a kind of terrour and uneasiness, when any mention was made (though only in the way of conversation, and conjecture of what was likely to be done hereafter towards the more compleat settlement of the province,) of re-investing those magistrates with the power they had formerly enjoyed. This being the case, the English and protestant inhabitants of the province thought, on this as well as the former accounts, that it would be a very safe and practicable measure to establish an assembly in the province which should consist of protestant

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testant members only, notwithstanding the seeming hardship of it arising from the great superiority of the numbers of the Roman-Catholick inhabitants, which naturally strikes people at first sight, and is apt to lead them into a contrary opinion, while they continue strangers to the condition of the province, and are ignorant of those peculiar circumstances attending it, which have been just now described.

And, as the English inhabitants were of opinion, that the establishment of a protestant assembly was a safe or practicable measure, that would not disgust the body of the Canadian freeholders in the province, (provided they were permitted to elect members into the assembly, though not to be elected into it,) they made not the least difficulty of thinking, that it would also be a wise or politick measure, because they were convinced that it would gradually operate as an inducement to such of the Roman-Catholick inhabitants of the province, as were not very strongly attached to the church of Rome, to abandon its erroneous doctrines, and embrace the protestant religion; and that, with respect even to those of them who were most zealous in the belief of the Romish religion, it might prove a means of engaging them to examine the foundations of it with freedom, which could hardly fail of producing  
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in them a conviction of its errors, and, in the end, an abjuration of them: and thus they were of opinion, that the Protestant religion would, in consequence of such an establishment, gain ground in the province amongst his Majesty's new Canadian subjects, which they considered as a most desirable event, and one that would greatly contribute to strengthen the attachment of those new subjects to his Majesty's government.

For all these reasons his Majesty's English and protestant subjects in the province, were of opinion, that neither Justice nor good Policy required, that his Majesty and the British parliament should break through the usual maxims of the State, and the directions twice given to his Majesty's Governours in chief of the province under the great seal of Great-Britain, in order to permit Roman-Catholicks to be chosen into the assembly: and therefore, they refused to join with some Roman-Catholicks in the city of Quebeck in expressly desiring his Majesty to do so. And they further thought, that, even if they could have approved the measure, it would not have become them to advise his Majesty to it, not being his Majesty's counsellors, but his humble petitioners, who had no right to suggest to him the measures of State and Policy, which he, in his royal wisdom, ought to pursue, and much less to desire him to take so very important

portant and unusual a step. And upon these grounds, I apprehend, they were compleatly justifiable, and even much to be commended, for not joining with those Roman-Catholicks at Quebeck in expressly petitioning his Majesty to permit Papists to sit in the assembly.

Yet such was the moderation of their conduct on that occasion, and so great was their desire to have an assembly established in the province, that (though they did not approve of the admission of Papists into it, and would not, therefore, join with the Canadian gentlemen at Quebeck in expressly desiring his Majesty to admit them into it,) they declared in their petition to his Majesty, (see the above account, page 19.) that they were willing to acquiesce in *an assembly of such constitution and form as to his Majesty, in his royal wisdom, should seem best adapted to secure the peace, welfare, and good government of the province*; intimating by these words their willingness to accept an assembly into which Roman-Catholicks should be admitted. But this did not satisfy the Canadian gentlemen at Quebeck, who continued to be apprehensive, that the maxims of the British government, with respect to the exclusion of Papists from seats in the assembly, or a share of the legislative authority of the province, were so highly respected in England, and considered by his

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Majesty's Ministers as of such fundamental importance, that they should not probably obtain their request of being admitted into the assembly without taking the oath of Supremacy, unless the English and other protestant inhabitants of the province should expressly join with them in making it. And thereupon they dropped their design of petitioning his Majesty for a house of assembly, tho' several of them were very desirous of having one. And, some months after, the small number of 65 persons \* in the district of Montreal sent up the other petition above-mentioned, which requests the king to enlarge the number of the council of the province, and give them a very limited legislative authority, instead of erecting an assembly, but upon a supposition, that no taxes are to be imposed in the province, until an assembly shall be established in it. (See the above account of the proceedings, &c. page 112.)

That several of the Canadian gentlemen, at and near Quebeck, in the Autumn of the year 1773, and particularly Monsieur Cugnet and his friends, or those who were guided by his opinion in public matters, were very desirous of having an assembly, provided the Roman-

\* N. B. I have some reason to think that another copy of the same petition was sent up by the Noblesse and a few other persons in the district of Quebeck, but do not know by how many persons it was signed. If it was signed by the same number as signed the former copy of it, the whole number of the French petitioners in the province will have been 130 instead of 65.

Roman-Catholicks were admitted into it, will appear by the perusal of the following draught of a Petition to the king's Majesty and the two houses of Parliament for that purpose, which was drawn up by the said Monsieur Cugnet, at the desire of some of his Roman-Catholick friends at Quebeck, in the latter end of August 1773, and sent by him, with the letter here-under following, to Mr. Malcolm Frazer, a British inhabitant of eminence in the province, who was known to be very desirous of having an assembly established in it, and who, for that reason, as well as on account of his abilities (which made him peculiarly fit for that office,) was chosen on the 30th of October following, (two months after the date of that letter) Secretary to the committee of the British and other protestant inhabitants of the province, then assembled at Quebeck, for the purpose of making the proper applications to Government, both in the province and in England, for obtaining an house of Assembly. This letter and petition have lately been put into my hands, and, as they relate to a very public and important subject, and tend to give useful information to his Majesty's Ministers, and the Members of both houses of Parliament, (to whom the further regulation of this unhappy province belongs,) concerning the sentiments of some of his Majesty's Canadian Subjects on the establishment of an house of Assembly in the province, they seem fit to be laid before the publick.



publick. I shall therefore here insert them without further preface, together with English translations of them, and with Mr. Malcolm Frazer's answer to Mr. Cugnet's letter, containing the refusal of the English and protestant inhabitants of the province to join with Mr. Cugnet, and his Canadian friends, in signing the said petition, which he had drawn up for the establishment of an house of assembly into which the Roman-Catholicks should be admitted.

Copy of a letter from Monsieur Cugnet, a French Gentleman of the city of Quebeck, eminent for his abilities and knowledge of the French laws and customs, that prevailed in the province of Quebeck in the time of the French government, to Malcolm Frazer, Esq. a British gentleman of eminence in the province, who was soon after chosen Secretary to the committee of the British inhabitants of the province, who were assembled at Quebeck, for the purpose of preparing petitions to the Lieutenant Governour of the province, and to the King's Majesty, for the establishment of a house of Assembly in the said province. Dated the 1st of September, 1773.

Monsieur,

**V**OUS n'avez pas pu réussir quant à votre pétition : aucuns Canadiens ne veulent la signer. Le glaive est cependant suspendu sur

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sur nos têtes. Il faut, pour éviter la tempête qui menace la province, prendre un parti. Quelques nouveaux sujets de mes amis, (hommes, par conséquent, pensant plus juste que les autres, et qui n'ont point signé des complimens ni de fades adresses,) m'ont engagé, (connoissant ma façon de penser,) de dresser une nouvelle requête : et je l'ai fait, sur l'assurance qu'ils m'ont donnée que plusieurs des anciens sujets de la basse ville leur avoient donné leurs paroles de signer celle que je ferois, quelque demande que puissent y faire les Canadiens. Je leur ai communiqué avant hier mon projet. Ils me l'ont fait rectifier : et je vous l'envoie tel qu'ils le jugent convenable.

Vous y verrez, Monsieur, que les Canadiens, comme les plus nombreux, les plus forts en propriété, vous font consentir à ce qu'ils entrent dans l'assemblée en plus grand nombre. Cette demande n'est qu'une forme. Je suppose qu'il y entre deux tiers des nouveaux : le tiers d'anciens sujets, plus instruits qu'eux, emportera certainement la voix des deux tiers. Je ne vous fais point l'éloge de mes compatriotes : mais, malheureusement, je connois leur peu d'intelligence et de talens. Leur demande ne doit donc pas arrêter la signature des anciens. ----- Ils demandent aussi que, s'il n'est pas possible qu'ils entrent dans l'assemblée, que les loix de propriété de la province

province soient entièrement conservées; et que le Gouverneur et Conseil, qui sera composé d'anciens et de nouveaux sujets, aient un pouvoir limité. ----- Ils concluent cependant toujours à l'assemblée du peuple.

Les Canadiens prétendent que cette Pétition doit être seulement en langue Françoisé, puisque tous les anciens sujets l'entendent.

Si, après vous être consulté avec quelques uns de vos amis, vous puissiez consentir à signer et envoyer cette pétition, je la ferai copier par *duplicata* sur deux parchemins, et je vous la remettrai pour la faire signer par les anciens sujets. Un de mes amis se charge de la faire signer par les nouveaux. Vous me rendrez réponse après avoir consulté; et vous me renvoyerez ma minute, soit pour n'en plus parler, soit pour la mettre en exécution. Il faut prendre un parti pour le Oui ou pour le Non. Les Canadiens ne signeront que celle-ci : ils vous proposent de vous joindre à eux. ----- Accoutumés à obéir et à être dans l'esclavage, ils préfèrent à être plutôt arrangés par le Roi et le parlement qu'à avoir une assemblée dont ils seroient exclus.

Je suis, avec considération, Monsieur, vôtre  
très-humble et très-obéissant serviteur,

François Joseph Cugnet.

Ce 1<sup>er</sup> Septembre,  
1773.

Translation of the foregoing Letter  
from Monsieur CUGNET to Mr.  
MALCOLM FRASER.

S I R,

**Y**OUR Petition has not met with success. None of the Canadians will sign it. Yet the sword hangs over our heads: and it is necessary, in order to escape the storm which now threatens the province, to come to a decisive resolution. Some Canadian gentlemen, who are my particular friends, (and who, consequently, are persons of a more rational way of thinking than the others, and who have never yet signed any compliments or insipid addresses,) have desired me (knowing my way of thinking,) to draw up a new petition: and I have accordingly done so, upon the assurances they gave me, that great numbers of his Majesty's English subjects in the lower town of Quebeck had promised them, that they would sign the petition I should draw, notwithstanding any request that might be contained in it in behalf of the Canadians. I yesterday shewed the petition I had thus been induced to draw up, to my Canadian friends, at whose request I had prepared it: and they have made a few alterations in it. And I now send it to you with those corrections;

rections, and expressed in a manner they approve and will agree to.

You will perceive, Sir, upon the perusal of this petition, that in it the Canadians make you join with them in requesting his Majesty, that they, as being the greater number of his Majesty's subjects in this province, and possessed of the greatest share of property in it, may be represented in the assembly by a greater number of members than his Majesty's British subjects in the province. But this request ought not to alarm the British subjects. For, if you will consider the matter with temper, you will soon agree with me, that this privilege of the Canadians, of having the greater number of members in the assembly, will, in its consequences, prove to be a thing of form only, that cannot be attended with any substantial effects. For, I will suppose, by way of example, that two third parts of the members that compose the assembly were to be Canadians, and the other third part Englishmen. It is next to certain that the English third of such an assembly, being so greatly superiour as they are to the Canadians in abilities and knowledge and capacity for public business, would in such case easily obtain the suffrages of the other two third parts of it to whatever measures they should propose. You will say, perhaps, that this is paying no great compliment to my countrymen,

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trymen, the Canadians. I confess it. But, unfortunately, I am but too well acquainted with their great want of knowledge and capacity to presume to speak of them in any other manner. This request of theirs, therefore, in the Petition I have now sent you, ought not to deter the English inhabitants of the province from signing it. These are the sentiments of my Canadian friends concerning an assembly.

But if, after all, it should not be thought expedient (on account of their attachment to the Roman-Catholick religion,) to admit them into an assembly of the province, my Canadian friends above-mentioned do in that case desire, in the next place, that the French laws of the province, relating to their property, may be wholly preserved to them; and that the Governour and council (to whom they presume the power of making laws for the province, will in that case be intrusted,) may be composed, in part, of his Majesty's new Canadian subjects; and that the legislative authority, entrusted to them, may be restrained within proper bounds. But this, it must be remembered, is only their second wish; for that they greatly prefer a house of assembly of the constitution above described.

My Canadian friends also desire, that this joint Petition of the new and old subjects of  
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his Majesty may be presented only in the French language. This request they conceive to be reasonable, and no-ways inconvenient to the English gentlemen, who intend to sign this petition, because all the English inhabitants of the province understand French.

If, after having consulted with some of your friends, you can bring yourself to consent to sign and send this Petition, I will cause two copies to be made of it on two different skins of parchment; and, as soon as they are ready, I will send you one of them for you to get it signed by his Majesty's British subjects in the province. One of my friends has undertaken to get the other copy signed by the Canadian subjects. When you have sufficiently consulted upon this subject with your friends, and have come to some resolution concerning it, I beg you would let me know the result of your deliberations by an answer to this letter: and at the same time you will please to send me back my original draught of this petition, which I have herewith sent you; to the end that we may either, on the one hand, say no more about it, in case you do not consent to it, or, on the other hand, if you should approve it, and resolve to sign it, may proceed, without further delay, to cause it to be copied out as above-mentioned for the purpose of being signed by his Majesty's subjects of both nations. You must

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must not, on this occasion, attempt to treat or argue any further upon the matter, or to make any alterations in this petition, as it is now drawn up : but you must resolve, either to sign it, or not to sign it, in its present form. For I plainly see, that the Canadians will never be brought to sign any other petition than this, to which they now desire your concurrence. From their habits of obedience to Royal authority, and submission to the yoke of slavery, they would sooner let their political concerns be regulated by the king and parliament, than be governed by an assembly of the province from which they should be excluded.

I remain, SIR,

with great regard,

your most humble and

most obedient servant,

Francis Joseph Cugnet.

This 1st of September,  
1773.

The petition mentioned in the foregoing letter of Mr. Cugnet was as follows :



Draught of a Petition to be presented to the King's Majesty and the two Houses of the British Parliament from both the Canadian and the British inhabitants of the province of Quebeck; prepared by Monsieur Cugnet in the month of August, 1773.

Au Roy, sa très-excellente Majesté ;  
 les Seigneurs Spirituels et Temporels ;  
 et les communes de la Grande-Bretagne, assemblés en parlement ;

Requête de très-obéissans et fidèles sujets de sa très-excellente Majesté, tant nouveaux qu'anciens, Seigneurs de fiefs, propriétaires de bien de fonds, citoyens, négocians, et marchands, habitans de la province de Québec dans l'Amérique Septentrionale, tant pour eux que pour tous.

**R**Emontrent très-humblement vos exposans, Qu'ayant appris par les derniers débats en parlement que les affaires de cette province doivent entrer en considération dans la séance prochaine, ils prennent la liberté de représenter à vôtre très-excellente Majesté et auguste assemblée,

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Assemblée, qu'ayant été encouragés par la capitulation générale du Canada, par le traité définitif de paix, et plus encore par la proclamation royale de vôtre très-excellente Majesté du 7<sup>iem</sup>e Octobre, 1763, les premiers [les Canadiens] ont resté et se sont établis dans la ditte province, et que plusieurs des derniers [les Anglois, ou anciens sujets] y sont venus, y ont acheté des biens, et y viennent journellement; dans l'espérance qu'ils ont eue, les uns et les autres, de jouir des bénéfices et avantages de Sujets Britanniques, ainsi qu'il leur a été promis par la ditte proclamation.

Vos exposans se flattent que la conduite qu'ils ont tenue d'obéissans et fidèles sujets, est pour eux un titre d'espérer la protection de vôtre très-excellente Majesté et l'auguste parlement, afin de jouir des constitutions Britanniques quant à la sûreté de leur liberté personnelle, de leurs droits et possessions, dont ils ne pourront jamais être pleinement assurés tant qu'il leur manquera une chambre d'Assemblée du peuple, composée de nouveaux et anciens sujets sans distinction; ce qui est une des parties les plus essentielles des dites constitutions.

L'augmentation d'un si vaste pais, dont le nombre des habitans excède actuellement celui de cent mille, dont quatre-vingts, dix-huit, sont nouveaux sujets; --- l'avancement de  
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son agriculture ; --- l'encouragement de sa navigation et de son commerce ; ---- un arrangement à faire sur des fondemens solides et inébranlables, qui puisse déraciner la confusion qui y regne, à son détriment, faute de loix fixes ; ---- sont des points présentement en considération, qui sont dignes de la sagesse de la législature Britannique, et qui méritent certainement l'attention particulière de la mère-patrie et toutes les graces qu'elle peut lui accorder.

Vos exposans prennent la liberté de vous représenter très-respectueusement, que la police intérieure et l'arrangement à faire quant aux loix de la province, doivent être déferés à ses habitans. Ils doivent, sans aucune doute, ainsi que ceux des autres provinces, être les meilleurs juges, et les plus naturels, de leurs intérêts et de leurs besoins en tous les tems, leur bien-être dépendant entièrement d'un arrangement solide. Ils sont les seuls en état de démontrer la voye qu'il est nécessaire de prendre pour parvenir à rédiger des réglemens qui produiront indubitablement leur propre bonheur, et qui rendront probablement la colonie, de plus en plus, très utile à l'Empire Britannique ; deux objets également intéressans à la Grande Bretagne et glorieux à votre très-excellente Majesté, père d'un peuple libre.

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Vos exposans, quoique de différens sentimens en matières de religion, ont néanmoins vécu depuis la conquête en bonne intelligence. Ils ignorent totalement le Jacobinisme : ils sont et seront toujours bons et fidèles sujets : ils ne reconnoissent que l'auguste famille d'Hanovre : ils désirent d'être unis et serrés avec les mêmes liens, qui les rendront à jamais et leur postérité soumis en tout à vôtre très-excellente Majesté et à ses héritiers et successeurs ainsi qu'au Gouvernement Britannique.

Vos exposans prévoient qu'on pourra leur objecter ;

Premièrement, Que, suivant les constitutions Britanniques, une chambre d'assemblée ne doit être composée que d'Anglicans :

Secondement, (et, sans doute, avec quelque espèce de raison,) Que ce païs, qui se ressent encore des malheurs de la guerre, n'est point en état de se soutenir lui-même ; ---- Qu'il n'est point encore tems d'y admettre une assemblée du peuple, et qu'un tel établissement seroit sujet à beaucoup d'inconveniens.

Ils prendront la liberté d'observer en réponse, quant à la première objection, que, lorsque la Grande-Bretagne a rédigé ses constitutions à cet égard, elle n'a pas pû prévoir qu'elle

qu'elle feroit par la fuite la conquête d'un païs immense, peuplé de gens nés dans le sein de l'Eglise Gallicane : --- Que ce païs conquis, qui contient cent mille ames et plus, dont seulement deux mille font de l'Eglise Angli-cane, ne peut être sujet aux anciennes constitu-tions : --- Que la conduite irréprochable qu'ont tenue les nouveaux sujets depuis la conquête, et leur soumission au Gouvernement Britan-nique, doivent être des sûrs garants à la mère-patrie qu'ils n'abuseront pas de la dérogation qu'elle voudra bien faire en leur faveur à ses anciennes constitutions : ----- Que votre très-excellente Majesté, en les assurant par la pro-clamation royale qu'ils jouïroient, ainsi que les anciens sujets Britanniques, du bénéfice des loix Angloises, leur a solennellement promis qu'ils en auroient tous les avantages ; et que, comme sujets Britanniques, il leur seroit per-mis de se faire représenter dans une chambre d'assemblée par des Canadiens de leur propre choix : --- Que la mère-patrie ne peut raison-nablement leur refuser cette grace, puisqu'elle leur a déjà accordé, contre ses constitutions, à être Jurés, non seulement dans toutes les affai-res civiles, mais même dans toute affaire cri-minelle.

Et, quant à la seconde objection, Qu'ils sont très-reconnoissans des soins paternels qu'il a plu à votre très-excellente Majesté d'avoir pour eux ; et, comme ils n'ont d'autres intentions ni d'autres

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d'autres vues que celles que doivent avoir les bons et fidèles sujets, ils sont prêts à contribuer, autant qu'il leur sera possible, au soutien du Gouvernement aussitôt qu'il plaira à votre très-excellente Majesté d'établir une assemblée du peuple composée de nouveaux et d'anciens sujets sans distinction, les nouveaux ne pouvant jamais souscrire à l'établissement d'une chambre dont ils seroient exclus, étant les plus nombreux et les seuls intéressés à cause de leur propriété, (qui excède de beaucoup et au-delà de sept dixièmes, en seigneuries et terres en roture, celle des anciens,) au bon établissement de la province.

Comme vos exposants savent que la province souffrira beaucoup des taxes qu'ils pourront s'imposer par le peu d'étendue qu'on lui a donné, qui en a nécessairement resserré le commerce et les ressources, ils prennent la liberté de demander très-respectueusement à votre très-excellente Majesté, à fin de pouvoir contribuer au soutien du gouvernement, de vouloir bien leur accorder la grace de réunir à la province toute la côte de Labrador, qui en a été soustraite ainsi que plusieurs parties du pays d'en haut.

S'il n'est pas possible de déroger aux anciennes constitutions Britanniques pour l'établissement d'une assemblée du peuple dans laquelle les Canadiens soient admis comme principaux

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membres et en plus grand nombre, Vos exposans, (qui ne peuvent consentir à une assemblée seulement composée d'anciens sujets,) demandent à votre très-excellente Majesté et auguste assemblée, Que leurs loix de propriété leur soient conservées en conséquence du 37<sup>me</sup> article de la capitulation générale et du 4<sup>me</sup> du traité définitif de paix. Il est de l'intérêt de la couronne de les leur laisser, parcequ'en les leur conservant ils seront tenus de payer à votre très-excellente Majesté les droits et profits féodaux, comme Quint quant aux fiefs, et laods et ventes quant aux rotures; droits, qui pourront monter annuellement, à cause des mutations fréquentes, à trois ou quatre mille livres sterling, qui serviront aux dépenses du Gouvernement. ---- Leurs loix de propriété conservées, ils consentent que votre très-excellente Majesté et auguste assemblée accordent au Gouverneur et Conseil, composé d'anciens et nouveaux sujets, le pouvoir de statuer seulement des ordonnances pour le maintien de la police, (conformément aux anciens usages,) et des réglemens pour la forme de Procédure; pourvû toutefois que ce pouvoir ne puisse jamais s'étendre à altérer en quoi que ce soit les fonds des loix de propriété dans les plus petites choses.

Vos Exposans supplient très-respectueusement et très-humblement votre très-excellente Majesté et auguste parlement de prendre leurs affaires

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affaires en considération, et de vouloir bien les terminer ; leur bien-être, leurs fortunes, et leurs libertés personnelles dépendant entièrement d'un arrangement convenable et solide. Et ils ne doutent point que votre très-excellente Majesté voudra bien leur confirmer la promesse royale et gracieuse qu'elle leur a faite par la proclamation, qu'ils jouïroient de l'ineffimable avantage de sujets Britanniques, dont celui d'avoir le droit de se représenter par des personnes de leur propre choix est un des principaux.

Et vos exposans, ainsi qu'il est de leur devoir, ne cesseront d'offrir leurs vœux à Dieu pour la prospérité de votre très-excellente Majesté, et de la Grande-Bretagne.

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Translation of the foregoing Draught of a  
Petition to the King and Parliament of  
Great-Britain, drawn up by Monsieur  
Cugnet.



To the King's most excellent Majesty ;  
and the Lords Spiritual and Tem-  
poral ; and the Commons of Great-  
Britain in Parliament assembled ;

**T**HE Petition of divers of his most ex-  
cellent Majesty's most faithful and obe-  
dient Subjects, both new Subjects and old  
ones, consisting of Lords of manors, Proprietors  
of freehold lands of inheritance, Citizens,  
Merchants, and Traders, in the province of  
Quebeck in North-America, both for them-  
selves and in behalf of all the other inha-  
bitants of the province ;

Humbly sheweth,

That your Petitioners, having been informed  
that it appeared by the declarations made in  
the course of some late debates in parliament,  
that the affairs of this province were to be  
taken into consideration in the ensuing session  
of parliament, do now take the liberty of re-  
presenting to your most excellent Majesty and  
this august assembly, that, in consequence of  
the encouragement given them by the gene-  
ral capitulation of Canada, and by the defi-  
nitive treaty of peace, and still more by the  
Royal Proclamation, published by your most  
excellent Majesty on the 7th day of Octo-  
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ber, 1763, the former part of your Majesty's subjects, the French inhabitants of this province, have remained in the province and settled themselves in it, and divers of the latter, your Majesty's ancient English subjects, have come into the same and bought lands therein, and others of them are daily coming into it, in the hope which they have all entertained of enjoying the privileges and advantages of British subjects, agreeably to the promise made to them in the said proclamation.

Your petitioners presume to hope that their uniform good behaviour, as faithful and obedient subjects, will be thought sufficient to intitle them to the protection of your most excellent Majesty and the honourable parliament of Great-Britain, for the enjoyment of those parts of the constitution of the British government, which tend to secure their personal liberty, their rights, and possessions, which they conceive can never be rendered perfectly safe, until an assembly of the people is established amongst them, consisting indifferently of Canadian and English members, without any distinction whatsoever; this being one of the most essential branches of the said British constitution.

The increase of the population of so extensive a country as Canada, which already contains

contains above an hundred thousand inhabitants, of whom ninety eight thousand are new subjects of your Majesty, ---- the improvement of its agriculture, ---- the encouragement of its navigation and commerce, ---- and a settlement of the laws, which are to be followed in it, upon solid and unremoveable foundations, so as to put an end to the confusion which now prevails in the province through the want of known and certain laws ; ----- are matters which are now to be taken into consideration, and are objects worthy of the wisdom of the legislature of Great-Britain, and which certainly deserve the most particular attention of the mother-country, and all the favours and assistance towards their attainment and completion, which it is in her power to bestow.

Your petitioners do further take the liberty most humbly to represent to you, that the interior regulation of the province and the choice and settlement of the laws that are to prevail in it, ought to be left to the inhabitants of the province themselves. They must, doubtless, be the best judges, (as they are evidently the most natural ones,) of their own interests and wants at all times ; just as the inhabitants of the other provinces in America are of their respective wants and interests : their welfare wholly depending on a solid and judicious settlement with respect to these subjects.

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They are the only persons who are able to point out the methods which it is necessary to take in order to succeed in drawing up such regulations as will not fail to promote their own happiness, and will probably render this colony continually more and more useful to the British Empire; which are two great objects, that are equally interesting to Great-Britain, and glorious to your most excellent Majesty, the Father of a free people.

Your petitioners, though they entertain different opinions upon matters of religion, have nevertheless lived in a friendly intercourse with each other ever since the conquest of the country. They are all of them untainted with Jacobite principles: they are, and ever will remain, good and faithful subjects to your Majesty: they acknowledge no title to the crown, but that of the illustrious house of Hanover: they desire to be united and connected by the same ties, which will preserve both them and their posterity to the latest generations, in a state of perfect obedience to your most excellent Majesty, and your Heirs and Successors, and to the British Government.

Your petitioners foresee, that two objections may be made to their request.

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In the first place it may be said, that, according to the fundamental laws of Great-Britain, a house of assembly ought to consist only of protestant members, of the communion of the church of England.

And in the second place it may be said, (and, it must be confessed, with some degree of truth,) that this country, (which still feels the effects of the ravages of the late war,) is not yet in a condition to bear the expence of its own civil government; ---- that it, therefore, is not yet time to establish a house of assembly in it; and that the establishment of one would be attended with many inconvenient consequences.

In answer to the first of these objections, your petitioners take the liberty of observing, first, that when the British legislature made the laws now in being upon that subject, they could not foresee that they should, at a distant period of time, make a conquest of an immense tract of country, inhabited by a people born and bred in the church of France; and, secondly, that this conquered country, which contains above an hundred thousand souls, of whom only about two thousand are protestants, cannot consistently, with justice and good policy, be made subjects to those British laws, which were so made in former ages, without any view to persons in their condition

condition and situation ; ---- and, thirdly, that the irreproachable conduct of your Majesty's new subjects ever since the conquest of the country, and their submission to the British government that has been established here, ought to be considered by the mother-country as sure pledges of their disposition to make a good use of any departure from the usual maxims of the British Government, which she shall vouchsafe to make in their favour : ---- and, fourthly, that your most excellent Majesty, by the assurances given to them in your royal proclamation, that they as well as your Majesty's old subjects, the British inhabitants of the province, should enjoy the benefit of the English Laws, has solemnly promised, that they should have all the advantages of those Laws, and, consequently, that, as British subjects, they should be permitted to chuse such persons as they shall think proper, whether Canadians or Englishmen, to represent them in a general assembly : ---- and, lastly, that the mother-country cannot reasonably, nor consistently with what she has already thought proper to do for their satisfaction, refuse them this favour, seeing that she has already permitted them, in derogation to the British laws upon this subject, to be impanelled upon Juries, not only in all civil cases, but even upon the decision of criminal matters.

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And,

And, in answer to the other objection above mentioned, to wit, that the province is not yet in a condition to bear the expence of its own civil government, your petitioners beg leave to declare, that they are very thankful for the paternal care which your most excellent Majesty has been pleased to take of them, and that as they have no other intentions nor views than such as are fit to be entertained by good and faithful subjects, they are willing and ready to contribute, in proportion to their means and abilities, to the support of Government, as soon as your most excellent Majesty shall be pleased to establish in the province an open assembly of the people into which both the Canadian and British inhabitants of the province shall be admitted without distinction; your Majesty's new Canadian subjects being utterly unwilling to consent to the establishment of a house of assembly out of which they should be excluded; which, they think, would be highly unreasonable, because they are so much more numerous than the English inhabitants, and possessed of so much greater a share of the landed property of the province, (having no less than seven tenth parts of the whole of that property,) and, from this greater share of the property of the province, are so much more interested in its welfare.

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As your petitioners are fully sensible, that the province must suffer a great deal from the weight of the taxes which its inhabitants may probably grant for the support of their own civil government, when an assembly shall be established in it, because, from the narrow limits, which have been given to the province by your Majesty's proclamation in 1763, its trade and means of acquiring wealth are rendered scantier than they had been in the time of the French government, they take the liberty of most humbly intreating your most excellent Majesty, in order to enable them the better to contribute to the support of the government of the province, to grant them the favour of re-annexing to the province all the Coast of Labrador, which has been taken from it, and put into the government of Newfoundland, and also of re-annexing to it those several tracts of country in the interior and higher part of North-America, which made formerly a part of the government of Canada, in the time of its subjection to the crown of France, but which now, by the limits assigned to this province by the aforesaid proclamation, are out of its jurisdiction.

But if, after all, it should not be judged proper to depart from the ancient maxims of the British government, and to establish an assembly of the people in this province of such a



constitution that the Canadians should be permitted to be chosen into it in greater numbers than the English, and form the principal part of it, your petitioners (who can by no means consent to be governed by an assembly consisting only of English members) do in that case humbly intreat your most excellent Majesty, and this honourable assembly, to preserve to them their ancient laws concerning their property, agreeably to the 37th article of the general Capitulation, and the 4th article of the definitive treaty of Peace. It is for the interest of the Crown that these laws should be preserved to them, because by the continuance of these laws your Majesty's said new subjects will remain under the same obligation of paying to your most excellent Majesty the dues and feudal profits arising out of their lands, to which they have always hitherto been subject; such as the fifth part of the purchase-money upon every sale of a fief, or tract of land holden of the Crown by fealty and homage, and the *Droit de Laods et Ventes*, or the twelfth part of the purchase-money upon every sale of a piece of land holden by rent-service; which profits (by reason of the very frequent alienations of land in this province) are supposed to amount to between three and four thousand pounds sterling a year; which would be a considerable aid towards defraying the expence of the government of the province. ----- If  
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their laws, concerning property, are thus preserved to them, they consent, that your most excellent Majesty, and this honourable Assembly, should delegate to the Governour and Council of the province (the said Council being composed of Canadian as well as English members) the power of making ordinances for the maintenance of good order in the province, (agreeably to the delegation of a like limited legislative authority to the Superiour Council in the time of the French government,) and of regulating the forms of proceeding in Courts of Justice; but with an exprefs provision, that they shall not have any authority to alter the laws of property, even in the minutest particulars.

Your petitioners most humbly and most respectfully intreat your most excellent Majesty, and the honourable Parliament, to take their affairs into consideration, and to bring them to a final conclusion; as their welfare, their fortune, and their liberty depend intirely on a suitable and solid settlement of them. And they do not permit themselves to doubt, that your most excellent Majesty will vouchsafe to confirm to them the royal and most gracious promise, which you were pleased to make to them by your proclamation above-mentioned, that they should enjoy the inestimable advantages of British subjects, of which the right of being represented

ented in a general assembly of the province by such persons as they shall think fit to chuse, is one of the most valuable.

And your petitioners, as they are in duty bound, shall ever pray to Almighty God for the Prosperity of your most excellent Majesty, and of Great-Britain.

✓ This Petition the English and Protestant inhabitants of the province refused to sign, because it *expressly desired* the King to admit Roman-Catholicks into the assembly, instead of simply declaring a willingness to acquiesce in an assembly of such form and constitution as his Majesty, in his royal wisdom, should think fit to establish, which the English thought was the proper line of conduct for them to pursue on that occasion, and which they accordingly did pursue in the petition, which they transmitted to England a few months after to his Majesty for the establishment of a house of assembly in the province. See their petition in the *Account of the Proceedings, &c.* page 16, & seq. Mr. Malcolm Fraser, therefore, upon the refusal of the English to sign the foregoing draught of a petition, which Mr. Cugnet had prepared,

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pared, sent it back to Mr. Cugnet, with a letter in answer to Mr. Cugnet's letter aforesaid, which was as follows :

The Answer of Mr. Malcolm Frazer to  
Mr. Cugnet's Letter above recited,  
of the first of September, 1773.

To Monsieur Cugnet.

S I R,

I Return you the inclosed Petition, which you was so good as to send me with your permission to communicate it to some of my friends. It was accordingly shewn to several in the lower town ; and they seem unanimous not to sign any petition that dictates to his Majesty, his Council, or his Parliament, what they are to do. But, as we all seem to be of the same opinion, that it is for the general good of the country that there should be an Assembly of the People, to form their own Laws and Police ; if the old Canadians will agree to address his Majesty, in general, decent, terms, for an House of Assembly, leaving it to his wisdom, how ; who are to elect, and to be elected, the new Canadians will join with them. If not, they may address his Majesty in their own stile, requesting what they want he should do for them.

them. These are, as far as I can recollect, the sentiments of those I have had an opportunity to speak with, as well as of —

S I R, Your, &c.

Quebeck,  
September 4, 1773.

Malcolm Frazer.

To Monsieur Cugnet.

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From the foregoing draught of a Petition and letter of Mr. Cugnet, these three conclusions may be drawn; to wit,

First, That Mr. Cugnet and his Canadian Friends, (whom he represents as persons of a more rational way of thinking than the generality of their countrymen, and who have never signed any compliments or insipid addresses; see above, page 23.) were very desirous of having an assembly established in the province, into which the Roman-Catholics should be admitted indiscriminately with the Protestants.

Secondly, That Mr. Cugnet himself was so desirous of having an assembly, that he would have preferred even an assembly of Protestants only, to any other mode of government;

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ment ; since he ascribes the disposition of his countrymen, to have their political concerns regulated by the King and Parliament, rather than by an assembly of the province, from which the Roman-Catholicks should be excluded, to their habits of obedience to the royal authority and of submission to the yoke of slavery. See the last sentence of his letter above mentioned. In this opinion, that an assembly of Protestants only, (though not so desirable a thing for the Roman-Catholick inhabitants of the province as an open assembly, into which Protestants and Roman-Catholicks should be admitted indiscriminately) would yet be preferable to a government by a legislative council, *Mr. Cugnet* agrees with *Monsieur de Lotbinière*. See the above *Account of the proceedings*, &c. page 175. & seq.

Thirdly, It appears, that *Mr. Cugnet* and his friends thought, that the principal objection to the establishment of an assembly of the province was the inability of the province to bear the expence of maintaining its own civil government ; which they seem to have apprehended, would be an immediate consequence of such an establishment. And they endeavour to obviate this objection by declaring, that the province is able and willing to bear a part of that expence, though not the whole. Their manner of wording this part of the petition is remarkable, and seems to imply an

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opinion that they ought not to be taxed, and an expectation that they should not be taxed at all, until an open assembly, consisting indifferently of Protestant and Roman-Catholic members, should be established in the province. The words are these: *Ils sont prêts à contribuer autant qu'il leur sera possible, au soutien du Gouvernement, aussitôt qu'il plaira à votre très-excellente Majesté d'établir une assemblée du peuple composée de nouveaux et d'anciens sujets sans distinction.* This expectation of not being taxed till an assembly is established in the province, appears likewise in the memorial of the 65 petitioners of the district of Montreal, which accompanied the petition, which was actually transmitted to England, and presented to his Majesty in February, 1774. See the above *Account of the proceedings, &c.* page 120.

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In the above *Account of the Proceedings, &c.* page 265, &c. I have printed a copy of a certain French letter, signed *Le Canadien Patriote*, which was circulated in the province of Quebeck among the French, or Canadian, inhabitants in December 1774, and January 1775, with a view to prejudice them against the English law, and to persuade them to approve the late Quebeck act, and to forbear joining with the British inhabitants of the province.

province to solicit a repeal of it. In the succeeding month of February 1775, the following answer was written to that letter by some English gentleman in the province, who thought it prudent to conceal his name. It was translated into French, and copies of the translation were handed about amongst the Canadians. It contains many just reflections upon the several false arguments advanced in the other letter, delivered in a decent and manly style, and is well worth the perusal of every gentleman, who wishes to be truly informed of the state of that province. It is as follows :

An Answer to the anonymous Letter  
written in December 1774, and  
signed *Le Canadien Patriote*.

(See the above *Account of the Proceedings*,  
page 265, &c.)



To the Writer of the Letter under the  
Signature of *Le Canadien Patriote*.

S I R,

**F**inding no answer has been given to the letter delivered to Mr. Olry on the 26th of December last, nor any enquiry made after the author, I have employed a few minutes in perusing your very extraordinary epistle ; on which, I beg leave, to make the following remarks by way of answer, in order to obviate, if possible, the prejudices which the dispersion of that letter may have created.

You set out by asserting, that some of the English people of this province employ themselves in stirring up the Canadians against the late acts of parliament, and against the French laws, thereby intended to be introduced, and that they endeavour to alarm them with apprehensions of the revival of letters de cachet, and other dreadful consequences of the re-introduction of those laws. In a matter so very interesting to all the inhabitants of the province, it is very probable, that the English, as well as the French, very often make the late acts and the consequences of them the subject of their conversation. But, I believe, on examination it will be found, that the favourers of the act and their emissaries have been much more assiduous and more clandestine

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destine in their applications to obtain the act, which regulates the government, as well as in preparing the minds of the people to submit to it, than its enemies have been in opposing it. For the latter hardly thought it possible, that such a law could pass; and now, that it has passed, they trust more to the goodness of their cause than to any importunate applications to particular persons, or insidious and scurrilous publications. And though some paragraphs have appeared in the publick papers reflecting on the religion and civil tenets of the Canadians, yet a little attention will shew, that it was impossible, that any of the English people in Canada could be the authors of such paragraphs.

The example set by the *Canadien Patriote*, might be here thought some excuse for illiberal language. But the English flatter themselves, that the dust \* of which their bodies are composed, is animated by souls that disdain to make national or personal reflections, or to blame a generous people for the unmerited aspersions of perhaps one individual. No! we, by experience, know the Canadians in general to be a people endued with more generous and brave sentiments than this pretended

\* This alludes to an expression in the other letter. See the *Account of the Proceedings*, &c. page 267, line 19, &c.

tended Patriot ever felt, and that they are above giving credit to any anonymous libels. Let them reflect on the time past, and they will find, that the few Englishmen that are settled in the province have ever been ready to treat them with that fraternal kindness which is becoming fellow-subjects and fellow-Christians, and that they have liberally contributed to alleviate their distresses on every occasion. And the English with pleasure acknowledge these obligations to have been reciprocal. Happy will it be for both, if this harmony is not interrupted by those whose duty ought to prompt them to use their talents to promote unanimity and Christian charity, but whose ambition induces them to prostitute these talents to servile adulation and sowing division.

The revival of the French law very naturally implies a revival of the powers exercised by the governours and people in power under that law. To illustrate this, I shall, after the example of the *Patriote*, put a few questions. And, first, Is there any thing in the act that provides against the exercise of these arbitrary powers in all civil and even many criminal matters? Did not Letters de Cachet subsist in the French time? Did not the governours and intendants take the people's effects, and put an arbitrary value on them? Did they not drag the people

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to prison and to the wars? Did they not impose taxes without their consent? You own they did. Was not justice administered by the arbitrary will and caprice of the judge? and, supposing him inclined to be upright, might he not be intimidated, or influenced, by the Governour, the intendant, or their emissaries? Were there no examples of such arbitrary proceedings during the French government? Has not justice been administered with impartiality under the English government? Is not the English mode more favourable to that liberty which is the natural right of mankind? Is there then no connection between the French laws and *Lettres de Cachet*, prisons, dragging to the wall, arbitrary taxes, and the despotism of Governours? Or were these powers exercised in Canada without law? And, if the French law countenances the exercise of them, may it not be feared, that they will revive along with it? *Misera est servitus ubi jus est vagum aut incognitum.* But further, is it impossible, that an ignorant or corrupt judge may be appointed? And if the suitors, or the rulers of the province, are base enough to impose on his ignorance, or to bribe or intimidate him, is there not a greater chance of these practices succeeding with one corrupted heart, though he may, perhaps, have a very clear head, than with twelve disinterested honest men, whose hearts are good, though

though they may not, perhaps, know all the chicane of the laws? Might not the expence of law-suits be diminished without annulling the English law? And what security have we, that the French law, when established, will be less expensive than the English law? Does not the English law allow a man to leave his estate to any of his children, or even to a stranger, or to divide it among them by a deed under his hand and seal? Has not the French method of granting lands been followed by the Seigniors under the English law? Why may it not be continued? Are tythes exacted in America? Or, who ever before dream'd, that the tythes would be exacted in Canada as in England? Is not the law in all countries of Europe so interlarded with Latin, or obsolete terms, as to be unintelligible to any but Lawyers? What matters it, therefore, in what language it is wrote originally, provided it is translated for the use of the people? And will not the English have the same objection against the French law? — If these questions are candidly answered, I believe, it will be found, that the English laws have every sort of advantage, and that the great Montesquieu and other judicious French writers give them the preference for the government of a free people. The Canadian Patriot is certainly misinformed (to say no worse) when he says, that the English are actuated by envy at the establish-

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establishment of the Roman-Catholick religion in their opposition to the acts. This, he may be assured, is by no means the case. For, though they certainly think the protestant religion the best, it cannot be said that for above fifteen years, that the government has been administered by protestants, there was any insult offered to the Roman Religion or its professors. — No! the protestants have (except in a very few instances at the commencement of civil government) showed an uniform inclination to live in harmony, and to avoid all religious disputes: and they are still resolved to persevere in doing so, notwithstanding the ungenerous and ill-grounded aspersions of this pretended Patriot.

When the English inhabitants of the province were informed, that there was something in agitation in England, regarding the settlement of Canada, they immediately communicated the information in November 1773, to some Canadian Gentlemen at Quebec, and (it is said) some of the latter met the former at a publick house, where they proposed to join in a petition for an assembly in the terms of the King's proclamation. But when the Canadian Gentlemen proposed to ask in express terms for two thirds of the house of Assembly to be Roman-Catholicks, the English objected, that this would be pre-

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scribing rules to the King; and thereupon the French Gentlemen broke off from the English, who were thereby obliged to petition the king in their own names only. They nevertheless took care in their petition to ask only for an assembly in general, without desiring the exclusion or admission of the followers of any particular sect of religion. It is true, there has been a petition published in England, as having been transmitted by the English, in which it is stated, that there are protestant subjects enough in the province to compose a house of assembly. But this petition (if it is not altogether spurious) must have been transmitted several years ago, when it would have been thought an insult to propose to his Majesty to admit any other than protestants. ----- The generality of the English now in Canada, who can be supposed to interfere in such matters, are so far from demanding the exclusion of the Canadians that they last year declared, and it is believed, most of them are still of opinion, that it would be far preferable for the inhabitants of this province to be governed under the British mode of a Governour, Council, and General Assembly, even if they were all Roman-Catholicks, than by the most unexceptionable Governour and Legislative Council that can be imagined, though they should all be Protestants, unless they could be rendered immortal: and, rather than to trust  
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to a council eligible by the governour, or even by the King himself, they think it would be much safer to have the whole power of government lodged in a single person, who would alone bear the blame of any misconduct. Be assured, therefore, that the English desire no exclusive privilege, and that they look on all kinds of religious persecution with abhorrence, and only wish to be dealt with as they would deal with others. It is, therefore, needless to revive the memory of the sanguinary transactions of past ages on the score of religion, which may be more justly attributed to the depravity of human nature, than to the fundamental principles of any sect of the Christian religion.

As to what is said by the Patriot about the duty on rum, that article must be passed over at present, as a discussion of it would lead into an examination of the present unhappy differences between the mother-country and our sister-colonies; a discussion of which we are both very incapable, and with which the people here have hitherto no immediate concern. It is hoped, these disputes will not proceed to extremities. But, if they unhappily should, the English and Canadians will, no doubt, shew that attachment to the constitution and government of Great-Britain, which the first owe to their



native country, the latter to their benefactors, and both to their Sovereign. As to the Canadian Regiment talk'd of, if it takes place, the province must not only find the men, but in time probably the money to pay them also.

The Canadian Patriot might possibly think his performance unanswerable, if no notice was to be taken of it: which has occasioned my writing these remarks on it. If he chuses to make any reply, avoiding illiberal reflections, he will probably be attended to: but if he persists in his former stile, he needs expect no further attention from

Any Lover of Truth  
and good Manners,

Indian Lorette,  
February 8, 1775.

A Defence

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A Defence of the British and Protestant Settlers in the province of Quebeck, against the imputation of endeavouring to procure a house of assembly in that province, from which all Roman-Catholicks should be excluded, with a view to oppress the Canadian, or French, inhabitants of the said province.

In a Letter to the Printer of the *Public Advertiser*, publish'd June 7, 1775.

S I R,

AS the British and protestant inhabitants of the province of Quebeck have been often represented by the patrons of the late Quebeck act as a turbulent handful of new settlers in that province, who wished to oppress and persecute the great body of the French or Canadian inhabitants of it, and, as a means of doing so, are desirous of having an assembly established in the province that should be chosen only from among themselves, I beg you would communicate to the publick the following paragraph of their last petition to the king for an house of assembly; in which they

they assure his Majesty of their readiness to accept of a house of assembly of such form and constitution as his Majesty in his royal wisdom shall think fit to establish.

“ Your Majesty’s petitioners being fully  
 “ convinced, from their residence in the pro-  
 “ vince, and their experience in the affairs  
 “ of it, that a general assembly would very  
 “ much contribute to encourage and pro-  
 “ mote industry, agriculture and commerce,  
 “ and (as they hope) to create harmony and  
 “ good understanding between your Majesty’s  
 “ new and old subjects, most humbly suppli-  
 “ cate your Majesty to take the premisses  
 “ into your royal consideration, and to direct  
 “ your Majesty’s governor, or commander  
 “ in chief, to call a general assembly, in such a  
 “ manner and of such constitution and form as to  
 “ your Majesty in your royal wisdom shall seem  
 “ best adapted to secure its peace, welfare and  
 “ good government.

“ And your petitioners, as in duty bound,  
 “ shall ever pray, &c.”

Dated Montreal, Jan. 10, 1774.

These words were intended to obviate any objection that might be made to the establishment of a house of assembly in the province of Quebec, from the seeming hardship of ex-  
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cluding from it the Roman-Catholick inhabitants of the province, who were so much more numerous than the protestants. It is true, indeed, that the British and protestant inhabitants of that province had formerly entertained hopes of being governed by an assembly, consisting of protestant merchants only, as the people of Maryland have ever been, notwithstanding the majority of them have always been, and still are, Roman-Catholicks. And their reasons for entertaining this hope had been by no means trifling; for, in the first place, they imagined that the wisdom and general policy of the British government would never commit the publick authority of the province to the hands of persons who refused to abjure the foreign jurisdiction of the bishop of Rome, let their numbers be what they would; and especially when those persons had been lately in arms against the Crown, and under the allegiance of the French king, who may be considered as the natural rival and enemy of the Crown of these kingdoms. And, in the second place, they observed that his Majesty, in both his commissions of Governour in chief of the province to General Murray and General Carleton, had given directions that the several members, both of the council and assembly of the province, should, before they were permitted to sit and vote in those capacities, take the oath of abjuration of the Pope's authority

thority (which is commonly called the oath of Supremacy) and the declaration against transubstantiation, as well as the oath of allegiance, and the oath against the Pretender's title to the crown.

Upon these grounds they have conceived the supremacy of the crown to be a matter of such fundamental importance in the British government, that the oath enjoined for its security ought never to be dispensed with in any of the dominions of the crown, with respect to persons who were to be invested with publick authority; yet they had expected that the Roman-Catholick inhabitants of the province would have been permitted to vote at the elections of members of the assembly, though not to be elected into it themselves; and this they knew would give them a great influence in the assembly, by means of the members they should so elect. For as the protestants in the province are no less than three thousand, and many, or most of them, are active, clever people, much more capable of doing the duty of assembly-men than the French or Roman-Catholick inhabitants of the province, it would be easy for the electors, out of so great a number of qualified persons, to choose such members as would be agreeable to them and attentive to their wishes and interests. But when the British and protestant inhabitants of the province came to hear that this great  
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fundamental principle of government, the acknowledgement of the supremacy of the Crown, had been dispensed with in the island of Granada, and Roman-Catholicks had been admitted into the assembly there, and were given to understand that, if an assembly should be called in the province of Quebeck, the Roman-Catholicks would there also be treated with the like indulgence; they resolved to acquiesce in a measure which they could not have advised; and as they had no personal aversion to their Roman-Catholick fellow-subjects, nor any desire of excluding them from the assembly but upon those general grounds of policy, which had formerly been adhered to by the British government, but which it had been thought expedient of late to depart from, they resolved, with the modesty becoming loyal and obedient subjects, to declare before-hand their readiness to acquiesce in the new system, and to accept, without complaining, of such an assembly as his Majesty in his royal wisdom should think fit to establish in the province. They accordingly drew up a petition to his Majesty in January 1774, to grant them an assembly, in which, after setting forth the grounds upon which, they thought, they had reason to expect one, they concluded with the paragraph above recited, which expressed their disposition to acquiesce in, and accept with cheerfulness an assembly of such form and constitution

tution as his Majesty in his royal wisdom should think fit to grant them.

This petition was signed by 148 persons, and was delivered to Lord Dartmouth in March 1774, two months before the late Quebeck Bill was brought into parliament. And about the same time, that is, about February or March 1774 a certain French petition was presented to his Majesty, which was signed by only 65 persons, some of whom were under age, and one of them, young Mr. St. Ours, a boy of only thirteen years of age; yet this petition has been considered as expressing the wishes of the whole body of the Canadian inhabitants of the province, and has been made the ground-work of the late extraordinary act of parliament.

Mr. Printer, I have thought it the more necessary to insert the foregoing paragraph of the Petition of the British and Protestant settlers in the province, because I find it has been asserted in a publick Vindication of the late Quebeck act, that they were desirous of oppressing their Canadian fellow-subjects, and as a means of accomplishing their purpose, had petitioned for an assembly consisting of Protestants only. The author of a plausible tract, published last summer, and intitled, "The Justice and Policy of the late Act of Parliament for Quebeck asserted and prov-

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"ed," has, amongst other very great mistakes upon this subject, the following passage in his 27th page: "And these persons (speaking of the British and protestant inhabitants of the province) finding there were no means by which they could oppress the new subjects, or seize upon the powers of government, but by obtaining a protestant assembly to be called, of which they only could be members, have laboured that point by repeated petitions to his Majesty and representations to the governour." And, as a proof of the truth of this assertion, he gives his readers, in his appendix, a copy of a petition from the British inhabitants of the province, in which they represent to his Majesty, "that there is now a sufficient number of his Majesty's protestant subjects residing in, and possessed of real property in, the province, and who are otherwise qualified to be members of a general assembly, and then conclude, by desiring him to give direction to his governour to call a general assembly in the said province, to meet at the city of Quebeck, in such manner as is used in those provinces in America which are under his Majesty's immediate government." Now this is a part of a petition from the British inhabitants of this province, which was presented some years ago; I have been told in the year 1770; but is no part of the last petition for an assembly, which was presented in March 1774, two months



before the bringing in of the late Quebeck Bill into parliament, and therefore it ought not to have been alledged by the author of that pamphlet in justification of that act. But that author has thought fit to be entirely silent, both in the body of his pamphlet, and in his appendix, as to that last petition of the said inhabitants which was delivered in March 1774. He best knows his reasons for this silence: But it is fit, in justice to the said British inhabitants, that the publick should be set right upon this subject.

As to the disposition to oppress and persecute the Canadians, which this writer imputes to the British inhabitants of the province, I will venture to say that there is not the least ground for such a charge. They have always wished to live in the utmost harmony with his Majesty's new subjects in the province, and to see them partake with themselves in the Liberty and Security, which the Laws of England, till the late Act, afforded them all in common; and they would have been happy to see them gradually abandon the tenets of the Romish Religion, and that adherence to a foreign jurisdiction, which had been till lately supposed to be a just ground for excluding the persons who hold them from power (though not from liberty and security) in Canada as well as England, and thereby become capable of partaking with themselves  
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in the exercise of the government of the country. And we have now seen, by the paragraph above recited from their petition, that, when they were informed of the change in the general policy of the British government, with respect to the exclusion of Roman-Catholicks from places of trust and power, they submitted their own sentiments to those of their superiours, and declared their willingness to acquiesce in the establishment of a General Assembly, into which the Roman-Catholicks should be admitted.

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About the beginning of December last 1775, a gentleman of Quebeck, of exceeding good sense, and who is well acquainted with that province, (which has been his usual place of residence ever since the year 1768,) related to me some very extraordinary facts, concerning the dissatisfaction of the great body of the freeholders of Canada, at the late Quebeck-act, on account of the general revival of the French laws of the province in all civil matters, which is contained in it, and which, in their apprehension, includes a revival of the powers of Government, that were formerly exercised over them by their Noblesse and the officers of the crown, during the subjection of the province to the French king; of which powers they have a great dread

dread and abhorrence. They have been more particularly alarmed at some endeavours which have been made by some of the Seigniors, or Lords of manors, in the province to call out their tenants to attend them, as soldiers, to oppose the American army under General Montgomery, under pretence of a right to command their military service on such occasions, by virtue of their tenures of their lands. These attempts of the seigniors have so disgusted the peasants of the seigniories in which they have been made, that they have broke out into acts of open violence to resist them. Of these tumultuous proceedings of the peasants, the gentleman above alluded to, gave me three remarkable instances, of which I shall now proceed to insert the following narrative, which was drawn up by that gentleman himself, at my desire, as I did not care to venture to relate them myself from the verbal accounts which he had given me of them, for fear of making some material mistake.

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A Narrative of the tumultuous conduct of the freeholders of divers feignories in the province of Quebeck in the summer of the year 1775, in opposition to the endeavours used by their Seigniors to call them out to take arms against the American army, that had invaded the province: Shewing their aversion to being commanded by their Seigniors, and the little influence their Seigniors, and the other Noblesse of Canada, have over them.

(Written by a Gentleman very lately arrived from Quebeck.)

**A**N opinion prevails in the Province of Quebeck, (whether just or not, I will not pretend to determine) that the Seigniors owe military service to their Sovereign, by the tenure of their lands; and that in the acts of (*Poi et Homage*, or) fealty and homage, they promise to perform the same to the Crown, when called upon: And that, by the same act, they also engage for the personal service of all their vassals, and other tenants,

nants, who hold their lands from them, either *par foi et homage*, or *par cens et rente*, or (as it is often expressed) *en Roture*. It is universally believed, that the Seigniors have by the customs of Canada, (which are revived by the late Quebeck act) a legal right, to command the personal service of all the holders of land under them, whenever the Sovereign, or his Representative, calls upon them, (the seigniors) for that purpose: And Government has thrown out hints, that those inhabitants, who refused to obey their seigniors last Summer, when called upon to oppose the provincials, have, by such refusal, forfeited all the title to their lands, which ought, on that account, to revert to the seigniors: And that, as soon as things shall be settled in the province, suits of law should be instituted, in the Courts of Justice, to dispossess them. The inhabitants themselves acquiesce in the truth of this doctrine; but they are determined to hold possession of their lands by force.

Mr. La Corne, a young man of about twenty-two years of age, and nephew to Mr. La Corne de Saint Luc, was sent by General Carleton to raise the inhabitants of Terrebonne, a village of which he (the younger Mr. La Corne) is Seignior. He addressed them in a very high tone, mentioning the above right, which he had, by the tenure of their lands,

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to command their military service. They answered, " that they were now become " subjects of England, and did not look on " themselves as Frenchmen in any respect " whatever." Mr. La Corne was imprudent enough to strike some of those who spoke loudest. This provoked the people to such a degree, that Mr. La Corne found it necessary to get away from them, and go back immediately to Montreal, but threaten'd to return speedily amongst them with a party of two hundred soldiers, who would make them dearly pay for their refusal to obey him. The people, hearing this, forthwith armed themselves, some with guns, others with clubs; and they all resolved to die rather than submit to be commanded by their feignior. General Carleton, hearing of the disturbance that Mr. La Corne's behaviour had occasioned, instead of complying with his desire of sending troops to enforce obedience to his authority, thought it adviseable, to send with him an English officer of merit, Capt. Hamilton, (late of the 15th Regiment, and now Lieutenant Governour of Detroit,) to pacify the people. Capt. Hamilton asked them, what they meant by assembling in that riotous, disorderly manner? They answered, that their intentions were to defend themselves from the soldiers, with whom they were threatened by Mr. La Corne, their feignior. " if General Carleton (said they) requires our service,

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“ vices, let him give us Englishmen to command us : such a man as you, for instance, we would follow to the world’s end.” But, replied Mr. Hamilton, English military gentlemen are not to be found in sufficient numbers, in the province, to take the command of you. “ Then, said they, “ give us common soldiers to lead us, rather than those people. For we will not be commanded by *ce petit gars*, that is, (literally, by that little boy, but, in their sense of it,) by that insignificant, raw, young man.” At last, upon Capt. Hamilton’s promise, that their seignior should come no more among them, they dispersed. Whether or not those people would have kept their word, and followed English Leaders, is uncertain, because General Carleton has never thought proper to make the experiment.

This behaviour of those people is the more remarkable, because Mr. La Corne is a very pretty young man in his person and appearance, and not despicable in point of understanding, and not less than three and twenty years old ; so that nothing but his quality of seignior, and the odious powers which they suppose to be connected with that character, can have rendered him disagreeable to the people.

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Mr. Deschambaud the son, (an officer at this time in the service and pay of the king of France, who is absent from his regiment upon leave,) went over to a feigniory belonging to his father, situated on the river Richlieu, and began to harangue the inhabitants of the feigniory, much in the same stile that Mr. La Corne had used at Terrebonne. Like consequences ensued. The people were exasperated at his treatment of them. They replied with sharpness. He drew his sword: they surrounded him, and beat him severely. He returned to Montreal, and complained of them to General Carleton. The next day Mr. Deschambaud, the father, went over and told the people, that the governour was highly displeas'd at the treatment his son had received from them: But that all would be forgiven, if they would repair to Montreal and ask his (young Deschambaud's) pardon; otherwise they might expect to be severely punished for their behaviour.

This speech served only to provoke them still more: they armed themselves immediately, went to the traders on the river Richlieu, and purchased all the ammunition they had in their stores, paying so great a price as five shillings a pound for powder, which is usually sold for less than a third part of that sum. They assembled to the num-



ber of near three thousand at Fort Chambly ; and began to march towards fort St. John's, to face the two regiments of regulars, that were in garrison there ; that being the force, which, they imagined, General Carleton would employ against them. But he, upon notice of their proceedings, sent an English officer to disavow the message delivered them by Mr. Deschambaud, the father, and to acquaint them, that all would be well, if they would disperse, and retire, each to his home. This was immediately complied with.

Mr. Cuthbert, an English gentleman, who is proprietor of an extensive and valuable feignory, called Berthier, summoned the inhabitants on his feignory to assemble at his house. They sent him for answer, that, if he had any thing to communicate, he might come to them : and they accordingly assembled at a place where three roads meet, and where there is a cross erected. Mr. Cuthbert came thither to them, and made a peremptory demand of their services on the French system, as being their seignior. They told him, if that was his business with them, he had best retire to his own home, and trouble them no more ; for that not a man of them would follow him. And as soon as he was gone, they all made oath on the cross, round which they were assembled, that they

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they never would take arms against the provincials: — That, if one among them offered to join government, they would directly burn his house and his barn, and destroy his cattle: — And that, if General Carleton should attempt to compel them into the service, they would repel force by force. And, having thus sworn, they went home. This happened in the latter end of July, or the beginning of August. Afterwards, (I think) about the end of September, Mr. Lanaudiere, the son, (who is owner of a seigniory at another place, called *Saint Anne's*,) came to them from Montreal, and said, that he was employed by General Carleton to lead them against the provincials; that he was going at that time to his estate at St. Anne's, but should return to Berthier in a few days, when he expected that they should be prepared to follow him; otherwise, he assured them, that their lands and houses should be burnt and laid waste. He accordingly did return to Berthier some days after; and, on entering the limits of the parish, he, and Mr. Tonnancour, the son, with sixteen others, their attendants, were surrounded and made prisoners by the inhabitants. Warm debates ensued amongst them, whether or not they should send Mr. Lanaudiere to the provincial camp near St. John's. It was, at length, agreed to set him and his friends at liberty, on his promise to obtain for them General Carleton's pardon for this outrage, and on his  
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further promise, never to come again amongst them on the like errand.

Violent as the proceedings of these people may appear, and averse as they may seem to the service required of them ; they have, notwithstanding, often declared, to Mr. Charles Gordon, a young man of knowledge and excellent character, from whom I had this intelligence, and who has resided two years in that parish ; they have, I say, declared to him, that, if General Carleton would promise, (by affixing a writing, to that purpose, to the church-door,) that he would use his interest and endeavours for the repeal of the Quebec Bill, and for restoring to them those privileges of which they were deprived by its operation ; in that case, the inhabitants of that district (who are very numerous) declared themselves ready, to defend the province for Government. --- “ But (say they) “ as things are now circumstanced, what have “ we to fight for ? We have enjoyed very valuable privileges, since we became subjects “ of Great Britain : We had the Royal Promise for the continuance of that enjoyment. On a sudden, without our having “ done any thing to merit such treatment, “ we are deprived of those inestimable privileges, and reduced to our former state of “ slavery. The people, whom we are desired to regard as enemies, tell us, they are

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" our *real* friends ; and they give us con-  
 " vincing proofs of their sincerity. They  
 " are now in arms for our defence from  
 " our oppressors ; and they make the repeal of  
 " the Quebeck Bill one of the conditions  
 " on which they offer to lay them down.  
 " Which party then ought we to assist ? Cer-  
 " tainly that one, which is fighting for the  
 " restoration of that liberty to us, of which  
 " we have been wantonly and most cruelly  
 " deprived by the other." And this is not  
 the language of the inhabitants of that district  
 only : the same is in the mouths of the most  
 ignorant peasants all over the province.

There are in Montreal many English  
 Gentlemen of experience in military affairs,  
 who offered their services to Governour Car-  
 leton, and would have been glad of being  
 employed to head the Canadians. *But their*  
*offers were not accepted* ; while Mr. de Rigou-  
 ville, a French Gentleman, whose talents  
 either for the Cabinet or the Field are not in  
 the highest reputation, was invested with a  
 command. The consequence was, that his  
 party all ran away, and he himself was sur-  
 prised in his bed, and taken prisoner. Major  
 Cox, an English Officer of eminence, and  
 Lieutenant Governor of Gaspé, offered to go  
 to St. John's, with 25 men, which he had  
 raised at Beaufort : but he was told, (as Mon-  
 sieur le Brun had been on his making a si-  
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milar offer of his services) *de rester tranquil chez lui*; to stay quietly at home and not meddle in the business. The English inhabitants of the province, though they felt for their treatment from Administration, and from General Carleton, yet did not think, that treatment could justify their countenancing, in any degree, those who were in arms against their Sovereign. Accordingly they have been very active in the defence of the province; and those few Canadians, who have taken part with Government, have been influenced entirely by their persuasion and example.

It is true, that Mr. Thomas Walker, and one or two others, are not of the number of those who have laboured to raise the Canadians for government. But it is evident, that the cause of their behaviour could not be a conviction of the justice of the American doctrine of exemption from taxation by the British legislature; because Mr. Walker and the other suspected persons were members of that committee which drew up the petitions, which were presented to the different branches of the legislature last Spring against the Quebec Bill. The stile of those petitions, if not the act of petitioning itself, is, surely, an acknowledgement of the supremacy of parliament. And besides, no mention is made in them of the acts which impose duties on spirituous liquors imported into the province;

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nor has it ever been considered as a hardship by those gentlemen, nor by any other persons in the province that ever I have heard of. On the contrary, those duties have been regarded as very moderate and judicious, and tending much to the advantage of the colony. Nay, so far were they from entertaining any idea, that derogated from the supremacy of parliament, that they much feared, that the British legislature would delegate the power of taxation to the legislative council of the province; and they were very happy to find that they had retained that power in their own hands.

The conduct of those gentlemen, then, is to be accounted for in some other manner.

Though they disapprove of the American principle of independency, they are afraid of the consequences that may attend their being subdued by force. They acknowledge the Americans to be in the wrong; but they cannot think administration altogether in the right; and, having no confidence in the Ministry, they do not look for a redress of the grievances of their own province, but through the strength of the other colonies. For this reason they may, perhaps, wish success to those, whose conduct they cannot quite approve of. — It is impossible, that they could derive benefit in any other manner, by the

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province falling into the hands of the provincials; on the contrary, as they are people in trade, it would be extremely prejudicial to their interests.

However, the conduct of those very few persons ought not to affect the majority of the English inhabitants of the province, who have, on this occasion, deserved well of government, and in justice to whom, (was there no other consideration) the iniquitous Quebec Bill ought to be repealed. For, I will suppose for a moment, (though it is the reverse of the truth,) that all the Canadian inhabitants have been so blind to their true interests and dearest rights, as to ask the ministry for the laws established by that Bill: And, that the ministry, to humour their foolish prejudices, have departed from the wise maxims of the founders of our constitution, and from the spirit thereof; and have shamefully broke the Royal Promise, solemnly pledged to the British inhabitants resorting to the province. In that case, the Canadians have, by their present inactivity, behaved with the basest ingratitude to their Benefactors, and have shown themselves undeserving of such extravagant indulgence.

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The fullest account, that I have seen of the late imprisonment of Mr. Thomas Walker, of Montreal, upon a suspicion of his having favoured the provincials under General Montgomery, who have invaded Canada, is contained in the following extract of a letter from Quebeck, dated on the 25th day of last October, 1775, which was written by a gentleman of good sense and veracity.

An account of the late arrest of Mr. Thomas Walker, of Montreal, by a party of soldiers, by order of Governour Carleton.

Quebeck, Oct. 25, 1775.

I forgot to tell you in my last letter, that, amongst the many groundless reports, which were daily spread about in the province during the last spring and summer, there have been several relating to Mr. Walker, of Montreal. His former enemies were not idle on these occasions, and all the friends of the Quebeck Bill were so much exasperated against him for his truly spirited conduct on the committee that drew up the petitions to Parliament against it, which were sent over to England last December, that they began so



early as in March last to plan his ruin. When the congress sent their first address to the Canadians, a Mr. Cushions, (an old and particular acquaintance of Mr. Walker's, when he resided at Boston) sent him a packet of them, printed in French, to distribute. Mr. Walker made no secret of his having received this packet, as we had long before received that address in the News-papers, and translated copies of it had been handed about the country by the French themselves. However, Rouville and Cugnet took occasion from it to tell the Governour in publick at his table, that Mr. Walker corresponded with the congress: And when that shameful insult, of which I have formerly sent you an account, was offered to his Majesty's marble Bust at Montreal, on the day on which the Quebeck act took place, mention was again made of Mr. Walker by his enemies, as having a concern in that odious business. But fortunately (if I can with propriety say so) for him in that matter, he was at that time, and had been for some days before, very ill with the rheumatism, under the care of Dr. Beaumont. One day Rouville got into a dispute with him and others, in the market in Montreal. What the dispute began upon, it is not material to enquire; but Rouville would support this position, *Que le roi est maitre*, that is, that the King is master, or that his will must always be complied with. Mr. Walker said  
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very coolly, " That, with regard to Monsieur de Rouville, it might be so, as he eat of his Majesty's bread; but, said he, I deny that the King is my master. I respect him as my lawful Sovereign and King, and am ready to pay due obedience to his lawful commands; but I cannot acknowledge him for my master while I live by my own industry. When I receive pay from him, I will acknowledge him for my Master." Rouville immediately wrote to the Governour an account of this conversation, and added, that he had made no reply to Mr. Walker: and in a few days he received an answer from the Governour, which he shewed to several persons at Montreal, in which the Governour commends his prudence, and promises not to forget him. And accordingly he was soon after named for one of the Judges of Montreal, to the great surprize and astonishment of all the French inhabitants, who had conceived an ill opinion and a strong dislike of him from his behaviour in the office of a Judge, of some kind or other, many years ago in the time of the French government. This Mr. Rouville is remarkable for taking every opportunity (as he speaks a little English) to throw himself in the way of the English inhabitants of Montreal, in order to pick up what tales he can, to send them to the Governour: And this has been so well known to be his practice that many persons have amused themselves

selves by leading him into mistakes, by opening their letters in his presence at the Post-Office, (where he was always sure to be,) and, mentioning things as if they read them in the letters, of which not a word was said in them, and which were totally without foundation. And it was while Mr. Rouville was thus upon the hunt for private anecdotes amongst the English inhabitants of Montreal, that Mr. Walker fell into the above dispute with him. This dispute, together with many invectives from some of the military gentlemen, who were particularly severe, and gave themselves many airs, styling the members of our committee, that prepared the petitions to Parliament, rebels, and construing our dislike of the Quebec Bill into a spirit of opposition to government, and declaring, that they hoped every moment to receive orders to take us up; I say, the conversations of this kind, which were frequently heard, (though chiefly indeed among the young and inconsiderate,) yet had so ugly an appearance, and so bad a tendency, that they determined Mr. Walker, in the month of May, to go to his country-house at Assumption to the pot-ash works which he had erected there, and amuse himself with those, and with his farm, merely for the sake of being out of the way of such conversations, and out of the reach of the calumny of his enemies. But all would not do; for it would be impossible  
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in the space of a letter to relate the many artful reports that have been spread to set his fellow-citizens against him, that he might with the greater ease be made a sacrifice to their resentment. One time it was reported, that packets of letters to him and others had been intercepted, which were answers to letters wrote by him; at another, that letters from him had been taken; then that two Canadians were taken up and in prison, who had brought letters for him from the Southward; then that he had been over the river with the provincials. Once it was asserted here, that he and two other persons were taken up and imprisoned, and that three more persons at Quebeck were soon to be so; then it was said, that he had quitted the province, and afterwards that he was fortifying himself. Mr. John Bondfield, having business up the country, called on him at Assumption, and mentioned these reports, and that we had publickly contradicted them at Quebeck. It was the first time he had heard of them; for he had not been easier or quieter for a long while, as he saw nobody but his own people, and amused himself on his farm, and with reading. But as things grew worse and worse, and our military preparations went on with vigour, (so that those, who did not carry fire and sword in words and actions, were suspected of favouring the provincials,) nothing was talked of but parties of men to take up people;

ple ; and on these occasions Mr. Walker's name was always uppermost. And at last, on the 7th of October the Post-man brought the News, that just as he left Montreal, Mr. Walker had been brought in there a prisoner ; that General Carleton had sent out in the night, with the greatest secrecy, an officer and thirty soldiers from Montreal, who were to receive their orders on their arrival at a certain place ; and that these orders were to take him and bring him to town (as the officer said) dead or alive. They accordingly surrounded his house just about day-break, and summoned him to surrender ; on which he flew to his arms, chusing rather the loss of life than to suffer what he thought he might expect from the soldiery when employed on such an errand in such troublesome times as these. He defended himself a long while with great courage, and wounded the officer and a soldier or two. At last, finding they could not get at him, they set fire to the house, and then he, with Mrs. Walker, were obliged to make their escape from the flames out of a garret window naked ; and thus he fell into the soldiers hands, who then, it is said, fell upon him, and beat him unmercifully. They carried him in a battoe to Montreal, where he was immediately put into very heavy irons, and no candle, or pen, ink and paper, were allowed him. Mr. John Porteous was permitted to see him, being a

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correspondent of Mr. John Strettel of London, who is also Mr. Walker's friend and correspondent: and he obtained a candle for him to read by. The post-man, who brought the first news, said that the Canadians, who were taken in the action near Montreal on the 25th of September against Allen's and Jerry Duggan's party, when they were examined concerning the reasons of their enterprize, and were asked how they could think to take Montreal with so small a body of men, had replied, "that Duggan had assured them that all the Canadians were in his interest; that they had doubtless heard of Mr. Walker; and that he was to join them with four or five hundred men." Now Duggan might artfully have said all this to the Canadians without any foundation whatsoever, in order to encourage them, and keep up their spirits. But, be that as it may, not a syllable transpired, nor could any thing be learnt concerning the grounds on which such a step was taken from that day until two days ago, when a gentleman in the service of government was heard to say he had full evidence enough to convict him, and to mention at the same time the deposition of Mr. Walker's own negro wench, who swears that a captain of the provincials dined with Mr. Walker the day before the action near Montreal, and relates some of the conversation that then passed at table. Others say there is certain proof that

he had a number of Canadians ready to join the provincials. But this I never will believe until I see it proved by good undoubted testimony; for had that been the case, nothing could have prevented their succeeding. And as to that provincial captain's having been at Mr. Walker's on the day before the action, as is said, it seems to me, that if that report is true, it affords a strong proof in Mr. Walker's favour, that, instead of complying with the captain's request to join him with the Canadians under his influence, (for that we must suppose to have been the captain's errand) he disapproved and declined the proposal.

A worthy and very sensible gentleman of this place (Quebeck) who has been for some time past at Montreal, and returned from thence since Mr. Walker was taken up, cannot give the least credit to any one of the reports that are circulated there to his prejudice; nor can he, for his life, imagine on what grounds the Governour goes in this violent prosecution of him. His loss must be very great by the burning of his house, store, pot-ash, books, &c. besides the cruel, ignominious treatment of him, rarely executed on felons until convicted.

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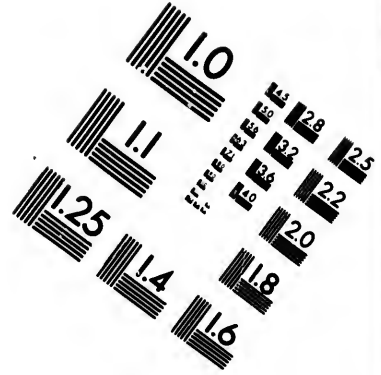
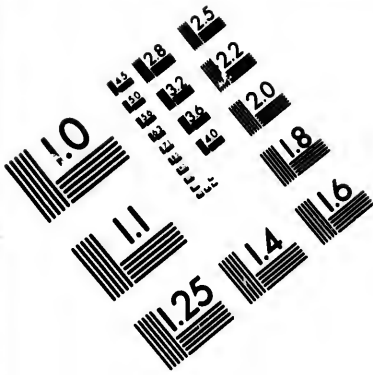
An account of the state of the province during the last summer, and of the motives that have caused the Canadian, or French, inhabitants of it to decline taking arms for the defence of it; extracted from a letter, dated at Quebeck, on the 25th of October, 1775.

Quebeck, Oct. 25, 1775.

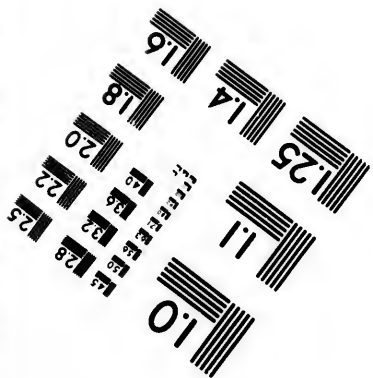
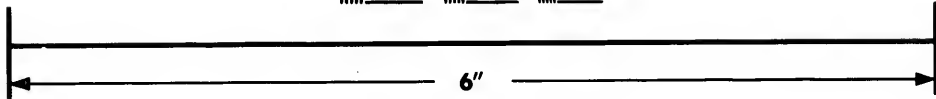
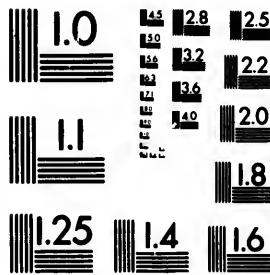
Administration may now easily see, (if they are not determined to remain in perpetual blindness and ignorance) what operates with the Canadians in this grand unhappy contest, and that it is not in the power of a Governour, a beggarly Noblesse, or their seigniors, (whom they detest) nor in the power of their clergy with all their threats and interdictions (if you can suppose they preach the same in private, as they do in publick) to make the Canadians take up arms to shackle themselves in slavery. If we dared to apply to the Canadians for an union with us to petition the King for an amendment of the Quebeck bill, we should find the tradesmen, most of the merchants, and all the country-inhabitants, unanimous in our favour. But we are deemed, and (I do believe,)







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lieve,) are represented by those persons who are the authors of all our misfortunes, to the Ministers of State to be worse than the Bostonian rebels, for infusing the principles of Liberty, (the birth-right of every Briton) into our fellow-subjects in Canada. For they must make somebody or other bear the blame of the behaviour of their *faithful Canadians*, as they used to call them, which has been so contrary to the false reports they had made, concerning their sentiments, to his Majesty's Ministers of State. And if the secret, wicked plots of these persons take place against us, many innocent persons must suffer on account of this defection of the Canadians, though the real causes of their behaviour, at this time, are these: First, a general cowardice; for they seem to have a horrid aversion to taking arms: secondly, a sharp remembrance of their former state of slavery; and a dreadful apprehension of returning into the same state, under their ancient laws and customs now confirmed to them: to which we must add, in the third place, that the canting Enthusiasts, who have come as emissaries at different times from New England to preach Liberty and Independency among them, have had more influence over their principles (if you allow them to have any) in this unhappy contest, than all the Jesuits in France, before their expulsion from that kingdom, could have had: and, lastly,

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lastly, the behaviour of their seigniors towards them (for General Carleton would hardly employ any others to command them) increased their disobedience to government. This day's post brings advice, that a strong body of men was to have crossed over the river Saint Lawrence from Montreal on Tuesday last, and that another body was to march up under the command of Colonel MacLeane, a very active officer; and that then both these bodies were to clear the country before them, join each other, and relieve the Fort of Saint John's. This week must determine our fate, whether there be a probability to keep the country until we have a re-inforcement from England next Spring, or become subjected to the American association.

Extract of another Letter from the same person. Dated Quebeck, November 9, 1775.

I Wrote to you the 25th day of last month. About ten days before that time, thirty Yankies, with a party of Canadians, (as we have since learnt, though it was concealed from us here at the time) brought two pieces of cannon from the camp before St. John's, and planted them before Fort Chambly, and  
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very soon made a breach in that single rotten wall; by which the garrison, which consisted of eighty men with six or seven officers, were obliged to surrender. They obtained leave to carry all their baggage with them; but left about eighty barrels of powder, a quantity of shot, some flour and pork, and their arms, and the colours of the 7th regiment, in the fort.

On the second of this month the fort of St. John's was obliged to surrender, the garrison being reduced to half a barrel of powder, and a very few pounds of flour and pork, without fire-wood, and most of them without shoes, insomuch that they were obliged to tear off the skirts of their coats to wrap about their feet. They are all sent prisoners to Harford in Connecticut, except the sick and wounded, who are left in the fort with a surgeon to attend them. The Provincials have taken a very pretty train of artillery; but I don't know the exact number of pieces.

Since the surrender of this fort the provincials have formed a camp at Sorel, and have sent a strong party with cannon and mortars against Montreal, which must be in their possession very soon, because it is not tenable. Governour Carleton and general Prescott were both there till Monday. As they have shut up the communication between Montreal and  
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this place, we have not heard any thing of it since: but we may soon expect to see both the generals come down by water, or hear of their being made prisoners. As soon as the armed vessels at Montreal and Sorel shall be obliged to drop down the river to be laid up for the winter, we shall be invested on all quarters here. Yesterday three hundred men arrived, it is said, at Point Levy, from New-England, by the river Chaudiere. They have stopped the communication on that side from the town, so that we cannot know their numbers, or what they have brought with them, or what they are about. And, as all the Canadians in the country join them, we may soon expect to be pretty closely cooped up here. We have but a very poor stock of provisions, and a far less stock of fire-wood: and besides, many of the inhabitants of the town do not seem to be very eager in the design of opposing the Provincials at the risk of their lives and fortunes, when they have no troops to support them: so that I am very apprehensive that we shall become subjected to the American association before we have any relief from Britain. If we should, it will require more than double the number of troops that conquered it before under the command of the brave general Wolfe, to retake it.

In case this unhappy contest shall be soon settled, and the different American establishments shall return to their primitive state, or whatever the establishments are to be, I must beg of you to be attentive to the welfare of this province, which has been lost by narrow-minded, wicked, plots and false representations. —The administration have now great cause to reproach themselves for their credulity and confidence in men unequal to the charge intrusted to them.

Extract of a letter from Quebeck, dated October 24, 1775, shewing the dissatisfaction of the body of the French, or Canadian, inhabitants of the province of Quebeck at the revival of the French laws by the late Quebeck act.

Québec, Octobre 24, 1775.

Monfieur,

**J**E crois ne pas être le premier à vous apprendre la triste situation de nôtre malheureuse province. Mais je puis avec certitude vous apprendre, que l'annonce de l'établissement des loix Françoises, et la nomination

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tion des Conseillers et Juges pour la dite province, ---- que le tout ensemble, dis-je, a fait un mécontentement si général et une consternation si grande que la foudre la plus redoutable n'a jamais pû faire sur un peuple.

On en a aussi ressenti les effets aussitôt. Car dans ce même moment nos frontières ayant été envahies par les ennemis du roi, on a voulu avoir recours aux habitants pour défendre ce malheureux país. Mais, loin de s'y prêter, plusieurs cantons se sont joints aux rebelles : et, en général, aucuns n'ont voulu prendre les armes, *ni, disent-ils, défendre un tas de b---- de pensionnaires, ni leurs f----loix Françaises.* Voici, Monsieur, les propres termes dont ils se servent. ---- Ajoutez à cela que l'on ne se sert envers eux que des personnes qui leur sont en abomination.

Vous sçavez que dernièrement Monsieur Walker de Montréal a été arrêté comme traître et rebelle, et est en conséquence détenu prisonnier comme tel. J'aurois eu l'honneur de vous adresser une relation exacte de tout ce qui s'est passé dans ces contrées depuis le mois de Mai : mais, comme l'on a établi ici les loix militaires, et que, par ces loix despotiques, nos vies et nos biens ne sont pas en sûreté, je craindrois que l'on ne s'avise d'ouvrir ma lettre, et que l'on ne me

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asse un mauvais parti à ce sujet, c'est à dire, pour dire et écrire la vérité.

Translation of the foregoing extract  
of a letter from Quebeck, dated  
October 24, 1775.

S I R,

**I** Presume that, before this reaches you, you will have received from other hands an account of the dismal situation of our unhappy province. But I can assure you with the greatest certainty, that the news of the revival of the French laws in this province, together with the appointment of the members of the legislative council and the new judges for the said province, have spread such a general discontent throughout the province, and thrown it into so great a consternation, that the most violent storm of thunder and lightning could not have produced a greater effect upon a people.

The ill effects of this new establishment have been felt almost as soon as it took place. For at that very instant the frontiers of the province were invaded by the king's enemies, and the Governour endeavoured to excite the inhabitants of it to take arms in its defence. But they were far from complying with his  
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exhortations. For many of the parishes joined the rebels: and throughout the rest of the country the inhabitants have, in general, refused to take arms for the government, *and to defend, as they express it, a pack of rascally pensioners of the crown, and their damn'd French laws.* For those, Sir, are the very words that they make use of. Add to this, that no persons have been employed to endeavour to raise them on this occasion but such as they hold in utter detestation.

You will no doubt have heard that Mr. Walker of Montréal has lately been arrested, upon a suspicion of treason and rebellion, and is kept a prisoner on that account. I should have given you an exact account of every material occurrence that has happened in this province since the month of May last, if it had not been for the establishment of martial law in it. But as under that arbitrary law our lives and fortunes are not in safety, I was afraid that my letters might have been opened, and that I might have been brought into trouble on that account, that is, for speaking and writing the truth.

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N. B. The new judges that have been appointed in the province, and who are therefore, I presume, alluded to in the above letter,

ter, are Monsieur Claude Panet, of Quebeck, and Monsieur René Ovide Hertel de Rouville, of Montreal; of whom the former has been appointed a Judge, of some sort or other, for the district of Quebeck, and the latter for the district of Montreal.

The writer of the above letter is a Roman-Catholick, and a new subject, as they are called in Canada, that is, a person who had been a subject to the French king before the conquest of the country, and became a subject of the crown of Great-Britain in consequence of the conquest. He is a man of extream good sense, and lives in a country village amongst the Canadian peasants, and has thereby a better opportunity of hearing and knowing their sentiments than those persons who reside in the towns of Quebeck and Montreal.

To the foregoing letters it may be proper to add the following long extract of a letter from an English merchant at Quebeck, dated Nov. 9, 1775, which gives a further account of the state of the province and the sentiments of the Canadians concerning the re-establishment of the French laws by the late Quebeck act.

Extract

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Extract of a letter from Quebeck, dated  
Nov. 9, 1775.

Lieutenant Governour Cramahé told Mr. Mac Aulay of this place, a few days ago, in great anger, "that it was our damn'd committees that had thrown the province into its present state, and prevented the Canadians from taking arms; but that he should hear more of that hereafter." By these words we presume we are to understand, that if they had power in their hands to enforce their authority, a star-chamber would be erected to harrass those who might differ in opinion from them, or might make any attempts, by future applications to the Throne, for a redress of their grievances; for we are told that all meetings are illegal by martial law. The new arrangement of government under the Quebeck-bill, met with a general disapprobation. Not to mention the English inhabitants, (who could not but dislike it, as it was totally different from what they had expected and applied for) the Canadians in general were displeas'd with it, and declared that it was not at their desire or sollicitation that it was pass'd; and that they had not been made acquainted with the petition which was presented to the King from a few persons in the province, and was made the ground of passing

passing it. They said that the persons, who had signed that petition, consisted principally of their ancient oppressors, their Noblesse, who wanted nothing more than, as formerly, to domineer over them; and they exclaimed against them bitterly on that account; but intimated that they had better take care of themselves, and not be too forward to put their intentions into execution. The Lawyers and Notaries, and such of the citizens as had been induced to sign that petition (or rather, had been afraid to refuse to sign it, for fear of being pointed at by the friends to such measures) almost unanimously declared their disapprobation and dislike of the Act of Parliament, more especially when the appointments of the members of the new council came to be made, and it was found that none but the Noblesse, or those who had the Croix de Saint Louis, were appointed to it, without a single person taken from the commercial part of the French inhabitants of the province. This, with the giving the half-pay to a set of French officers who had served on a Battoe<sup>v</sup> expedition against the Indians in General Murray's time, and the appointment of Monsieur de Rouville for one of the Judges at Montreal, and of Claude Panet for Quebeck, with salaries, as it is given out, of 700l. a year each, and, in short, the wantonly and profusely inventing places for creatures

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creatures and sycophants, with which the Governour was continually surrounded, has given great disgust. It is indeed alarming to think how all this money was to be raised. A very little matter would have induced the Canadians to unite in a body to petition for a Repeal of the Act. But no one cared to step forth, and set forward any measure of that kind, partly thro' the fear of the ill treatment, which they might be made to suffer in consequence of having done so, now that the Governour's Authority is so extensive, and partly through the hope that we continually entertained of hearing from England of the Repeal or Amendment of it. Peter Panet, of Montreal, (who is brother to the other, but quite another sort of man) had every reason to expect to be made a Judge, if any of the French were to be made so. He is really very clever, and had been Clerk to the Court of Captains of the Militia immediately after the conquest of the country, or, one may almost say, both Clerk and Chief Judge; and he certainly ought, on this occasion, to have had the preference by far to Rouville. Indeed, the nomination of the latter to this office is so offensive to the Canadians at Montreal, that they were quite exasperated at it, and were going to prefer a petition to the Governour against his being appointed to it. But the taking of Crown-Point, and the subsequent disturbances in the province, put a  
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stop to every thing, and has prevented any part of the Act from taking place.

The Canadian inhabitants of this province openly avow their affection to the English manners and customs, and declare that they never wish to live quieter or more happy than they have done since the commencement of the civil government. Indeed it is surprising to see how much they have flourished and increased in riches within these few years, by meeting with so good a market for their produce. This is owing to the great spirit of speculation-trade that prevails amongst the English Merchants here and their Friends at Home, and cannot in any degree be attributed to the French Merchants, who have nothing of the spirit of trade in them. This flourishing state of the province, since the establishment of the English laws in it, makes the Canadians fond of those laws, and desirous of their continuance: And numberless are the proofs that might be given of their preferring them to the French laws by which they were formerly governed, were it not for the artifices of a very few persons, the Noblesse<sup>9</sup> of the province, who, by having gained the support and assistance of Government, have had it in their power to disguise the truth, and prevent an union between the old and new subjects in making applications to the Throne to obtain a settlement of  
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the province upon the foundation of the English law. When any strangers from England have come to these parts by way of curiosity, who on their return might have represented things in a true light, they have been kept up amongst a small circle of people, and have hardly ever appeared in publick, or conversed with the people at large, and have thereby been prevented from getting true and general information concerning the real state of the province and the sentiments of its inhabitants.

The Canadians, very early this Spring, declared, that the Noblesse had no manner of authority over them, and that even their seigniors had no right to command their military service. They acknowledged, that they owed them respect as their Lords of the Manor; but they insisted, that, when they had paid them their quit-rents, and all their other just dues, together with certain compliments which were customary at different seasons, they owed them nothing further, and were not bound to submit to any power they might presume to exercise over them. For some of the seigniors have pretended to some authority over their tenants; of which there was an instance in the seigniorie called *La Beauce* behind Point-Levi, where the young seignior, *Monf. Taschereau*, caused one of his tenants to be confined for refusing to march at his command against the Provincials, who had invaded the

province; but he soon thought it best to solicit the man's release, and did not afterwards try the same experiment with any other of them. But in other parts of the province several of the Canadians have been threatened with the same treatment, if they did not obey their seignior's order to take arms for the defence of the province, in order to frighten them into the service. But it has had the contrary effect, and has been found to be of bad consequence. Nothing of this kind had appeared before the Quebeck Bill passed. But the strongest verbal proof that I can give you of the dislike of the Canadians to the Quebeck Bill is this: Mr. John Thompson (who is a very honest man) told me yesterday, that he was present at the Coffee-house at Montreal when Mr. James Finlay of that place declared publicly, that the Captain of the French Militia had, in his presence, told Governour Carleton, "That the Canadians in that town, themselves included, would not take arms as a Militia, unless his Excellency would assure them on his honour, that he would use his utmost endeavours to get the Quebeck Bill repealed;" and that he thereupon promised them, that he would do so. But now all these considerations are at an end for the present, as we are likely to have new masters shortly.

The Governour's reason for establishing Martial Law in this province was, that he might  
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be able by means of that law (which he thought would authorize him so to do) to force the Canadians to take arms. But he has entirely failed of success in this attempt. Indeed, it was a most ridiculous attempt, as he had no troops at hand to enforce his authority or commands. Great threats are frequently thrown out, and every now and then people are put under confinement by the militia. On Saturday, the 28th of October, Mr. John Dyer Mercier, as he was going into the Upper-Town, was laid hold of by the Town-Serjeant, and conducted to the main guard, and there confined, and his papers were seized and examined, merely by the order of the Lieutenant-Governour, without any crime or accusation alledged against him; and at day-break the next morning he was put on board the Hunter Sloop of War. This was very alarming to the citizens of Quebeck, who thereupon had a meeting, and appointed three of their number to wait on the Lieutenant-Governour to know the cause of so remarkable a step. He made answer, "that he had sufficient reasons for what he had done, which he would communicate when and to whom he should think proper." But he soon thought better of it. For the next morning he called together the six Captains of the British Militia, and communicated to them one or more intercepted letters directed to Mr. Mercier, of a nature that was sufficient to warrant his being secured

for the safety of the town. But nothing was found that had proceeded from him, or that could serve as a proof to convict him of any crime. This communication gave a good deal of satisfaction. It is a piece of Justice to the French inhabitants of the province to say, that those of them who have taken arms for the defence of the province, are not corrupted in their tempers by the use of them, so as to be ready to act as the instruments of arbitrary power over their fellow-citizens, but rather decline being so employed. Of this we had lately a remarkable instance at Montreal. For General Prescott, who commands at Montreal, having thought fit to place centinels at the fore and back doors of Mr. Walker's house to be a guard upon Mrs. Walker (notwithstanding her husband is no longer with her, but a prisoner on board a sloop of war) ordered Pascal Pillet, one of the French inhabitants of Montreal who had taken arms for the defence of that city, to attend that duty. But Pillet would not do it, but replied, "that he took up arms for the defence of the city, and was willing to stand sentry in his turn on the walls to oppose the enemy, but would not be employed as a gaoler to watch his fellow-citizens, but would sooner throw down his arms, though they were his own property, and let those persons take them who would consent to be so employed.

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General Prescott, upon being told of this refusal, thought proper to drop his design of setting a guard upon Mrs. Walker, and said, it was hardly worth while to watch an old woman. This certainly does honour to the spirit and temper of the French inhabitants who have entered into the Militia upon this occasion. Shortly after this affair we heard, that Fort Chambly was taken, with eight officers and 60 men. Then it was said, that a plan was formed for General Carleton and Col. M'Lean to join their forces, and march to the relief of St. John's Fort. It was given out here, that General Carleton had 1500 Canadians with him. Proper signals were agreed on, and General Carleton was to cross over the River St. Lawrence with his army, which consisted, first, of the militia of Montreal; and, secondly, of a number of Canadians that he had with him, and whom he had maintained for some time before at Montreal; and, thirdly, a few troops that he had with him, who might amount to about 100 men, and who were to have headed the Canadians; and, lastly, some Indians. They accordingly set off from Montreal in high spirits, and attempted to cross the River St. Lawrence, and land at Longueuil; but they were so warmly received by the provincials on the other side the river, that they could not make good their landing, but were thrown into great confusion, and retired with precipitation. Some of them ran a-ground on

on an island, and had like to have perished, but were saved by the New-England men. Two Indians were killed, and two more taken prisoners. The next Express informed us, that, upon Colonel M'Lean's party hearing of this repulse, his Canadians had all left him, and retired to their homes. And the night before last an Express brought the News, that the garrison of Fort St. John's had capitulated, (being starved out) and were all made prisoners of war; and that Montreal was invested, and its communication with the country entirely cut off; and that the provincials were on St. Helen's Island, over-against the town, and were there erecting a battery to fire upon it, in case they shall refuse to capitulate; and that Governour Carleton, was on board the *Fell*, an armed snow.

There are also 1500 provincials arrived at Point-Levi. We have within a few days past heard of their approach, and our guards have been doubled on that account. Our fate (at least for some time) must soon be decided. There are fifteen Commissaries appointed, consisting of the six English and six French Captains of Militia, and the three Judges. Three of them sit every day, to examine into small matters, and give passes to all the canoes that come into, or go out of, the town. This, with the means made use of to get Canadians from the neighbouring country to do duty in town has so intimidated the inhabitants of the country,

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country, that very few of them venture to come to town, so that we have hardly a supply of provisions from hand to mouth, much less to stand out a siege. (42)

P. S. Just now an order is come down for eight men from each of the six companies of the British Militia to appear on the parade *without Arms*, to receive One Shilling and a pint of Porter for the business they were to do. Orders are also given for a party of Marines, to be on the parade *armed*. So we are inclined to judge the intentions of our Government to be to force us to a defence of the town, and sacrifice our lives and properties. The Shilling and a pint of Porter are supposed to be considered as King's money to enlist us, and subject us to military discipline. The Lord protect us from our enemies within and without !

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As the design of publishing the foregoing papers is, to present to the publick a true account, and, as it were, a picture, of the sentiments of the inhabitants of the province of Quebeck, both French and English, and more especially those of the French, or Canadians, which many people here in England have greatly misconceived, it may not be amiss to add

to

to them the following little French song, which the Canadians have made this last summer upon Mons. Briand, their bishop, in ridicule of a circular letter he had writ to them to exhort them to take arms for the crown against the other Americans, and in which he had promised indulgences to those who should comply with his exhortations, and threatened those who should refuse to do so with excommunication. The sending such a letter amongst them, they consider as a proceeding quite unsuitable to the character of a Christian bishop, who ought to have no concern with matters of a military nature, or that tend to the shedding of blood: and they ascribe the bishop's complaisance in writing it to his gratitude for a pension from the crown of 200l. per annum, which has been lately bestowed upon him, and to his hopes of getting it increased. This song is as follows:

Sur l'air, *Belle brune, que j'adore.*

## I.

**B**ERNARD n'étoit qu'une bête  
 Auprès de nôtre Briand..  
 Grand Dieu! quelle bonne tête!  
 C'est du ciel un vrai présent.

Au



II.

Au mandat de sa croisade  
 Armons nous, mes chers amis.  
 Boston n'est qu'une promenade :  
 Ces mutins seront soumis

III.

Nous voyons bien leur défaites  
 Assurées pour le certain.  
 Ils n'observent pas nos fêtes,  
 Et n'adorent pas nos Saints.

IV.

Le prélat. dit de combattre.  
 Pourrions-nous donc balancer ?  
 " La Foi, dit-il, va s'abattre,  
 " Si vous osez refuser.

V.

" Vous perdez les indulgences,  
 " Que j'accorde à chaque fois.  
 " D'un cœur plein de vaillance,  
 " Quand à l'autel je parois.

VI.

" Les Jésuites dans les formes  
 " Subiront, sans contre-dit,  
 " L'anathème lancé de Rome,  
 " Si vous n'êtes pas soumis."

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VII.

VII.

Marchons en bons fanatiques :  
Allons nous faire égorger ;  
Puisque la Foi Politique  
De nos sorts veut décider.

VIII.

Les indulgences plénières  
Nous conduiront sûrement  
A l'éternelle lumière  
Si nous sommes obéissans.

IX.

En dépit de la vraie gloire  
Portons nos pas en avant :  
Dans le temple de Mémoire  
Nous ferons mis tristement.

X.

Et, par nos braves proüesses  
Dans les combats, méritons  
Qu'on augmente avec largesse  
Du prélat la pension.

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Translation of the foregoing French  
Song.

I.

**T**HE great St. Bernard was but a blockhead  
In comparison to our bishop Briand.  
Good God! how great a genius he possesses!  
He is truly a gift to us from heaven.

II.

At his command to engage in this crusade,  
Let us take arms, my dear friends.  
A march to Boston is but a pleasant walk:  
And these rebels will soon be subdued.

III.

We see their ruin  
Ascertained beyond a doubt.  
For they do not observe our holydays,  
And do not worship our Saints.

IV.

It is our bishop that commands us to take arms,  
Can we then hesitate a moment about doing it?  
" The true faith, he says, will be ruined,  
" If you presume to refuse your assistance in  
this war.

V.

“ You will lose the benefit of the indulgences  
“ Which I grant every time that,  
“ With a heart abounding with courage,  
“ I appear at the altar.

VI.

“ The Jesuits will now be forced,  
“ Without all doubt, to undergo in all its  
  extent  
“ The sentence of dissolution which has been  
  pronounced against them at Rome,  
“ If you are not obedient to my orders to  
  you to take arms.”

VII.

Let us then, my friends, like true and obedient  
  sons of the church, begin our march ;  
  And cheerfully go and get our throats cut :  
Since this new Faith Politick  
  Thus resolves to determine our fate.

VIII.

Plenary indulgences  
  Will carry us safely  
To the regions of eternal light,  
  If we are obedient to our bishop.

IX.

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## IX.

In direct opposition to the love of true glory,  
 Let us advance in this warfare ;  
 Though in the temple of Memory  
 We shall, for our pains, make but a piti-  
 ful figure.

## X.

And, by our valiant exploits  
 In the field of battle, let us acquire a right  
 to ask, as a reward of our services,  
 That his Majesty would be pleased to make a  
 liberal addition  
 To the pension he has bestowed upon our  
 bishop.

The gentleman, who favoured me with a  
 copy of this song, has communicated with it  
 the following remark, which I understand to  
 have been written by this gentleman's corre-  
 spondent in the province of Quebeck, who  
 had sent him a copy of the song.

✱ N. B. On dit que plus de 30 chansons  
 pareilles et 50 placards, où la cupidité, l'ex-  
 travagance, et l'ambition du prélat sont dévelop-  
 pées, et qui annoncent parfaitement à quel  
 point de mépris il s'est réduit par une con-  
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duite aussi extraordinaire pour son état, lui ont tout à fait tourné la tête. Il envoie, en haut et en bas du pays, excommunications sur excommunications. Ce n'est plus au roi qu'on désobéit ; c'est à l'église, dont il est le chef. Sa folie, (qui ne fait qu'irriter les peuples,) dure depuis le 20 de May. Cependant depuis le 3 de ce mois (Novembre) il se tait ; — menace même le pays de s'en aller en France. Plût à Dieu qu'il exécutât sa menace ! mais ce n'est que la peur qu'il a des Bostonnois qui la lui fait faire.

*Translation of the foregoing Remark.*

N. B. I am informed, that more than thirty songs of the same nature with the foregoing, have been made in the province of Quebec upon the bishop, besides fifty papers that have been posted up in publick places, in which his avarice, his love of power, and extravagant behaviour, are freely censured, and which plainly shew to what a low pitch of contempt he has sunk himself, by a conduct so unsuitable to his episcopal character : and it is said, that these mortifications have almost turned his head. He has been continually issuing forth excommunication after excommunication throughout every part of the province, and talks of nothing but disobedience, not to the King, but to the church ; of which he (the bishop) is the head. This wild conduct (which  
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has no effect but that of disgusting the people of the province) has continued ever since the 20th of last May. However, since the 3d of this month of November, he has been quiet;— and even threatens to leave the province and go to France. Would to God, that he would put this threat in execution! But it is only the fear of the Americans, who have invaded the country, that has been the cause of his making it.

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From this Song, and the remark upon it, it seems evident, that the endeavours which have been made by Government to make use of the spiritual authority of the Popish bishop of Quebeck to excite the Canadians to take arms against the English Americans from motives of religion, have produced the quite contrary effect: They have indisposed the Canadians, both against the bishop and the cause he recommended to them. This disgust of the Canadians against their bishop, on account both of the pension he has accepted from the government, and of the circular letter he has writ to them, to exhort them to take arms against the other Americans, will further appear from the following anecdotes concerning his imperious conduct both in the last Summer and for some few years past, which are contained in an extract of a French letter written by a Canadian Roman-Catholick, who is at this time resident in that province, and who, notwithstanding his attachment to that religion,

much

much disapproves such violent and exorbitant abuses of spiritual power.

### Anecdotes sur la conduite de Monsieur Briand, Evêque de Québec.

Extraites d'une lettre de Québec de la fin de Septembre, 1775, à un ami à Londres.

**I**L y a sept ans que Mr. Vincelot, Seigneur de l'Islette, donna, à la requisition de l'Evêque dans sa visite, un terrain de huit arpens en superficie aux conditions qu'on bâtiroit l'Eglise sur ce terrain. Monsieur Vincelot y fit construire à ses frais un très vaste presbitère, dans lequel on pouvoit dire la messe, en attendant que l'Eglise fut édifiée: le Curé y étoit logé. Au bout de deux années Monsieur Briand, plus inconstant que le vent, à la demande des habitans du haut de la paroisse, determina ailleurs un lieu ou l'Eglise devoit être bâtie. Elle s'éleva insensiblement, et après trois années on la mit dans le cas d'y pouvoir dire la messe. Les conditions n'étant pas remplies, Mr. Vincelot reprend son terrain et la maison qu'il y avoit élevée. L'Evêque lui fait signifier par le curé, que ce qu'il a donné à l'Eglise, il ne peut le retirer; Et qu'en conséquence, s'il ne remet le terrain au curé, *il l'excommunie avec toute sa famille.* Mr. Vincelot méprise sa menace, et garde son terrain. Le prélat devient furieux, lui fait signifier par le curé l'excommunica-

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munication, et à son épouse, si elle est du même sentiment. Alors Mr. Vincelot l'attaque, et en pleine cour lui reproche ses fureurs, ses violences, et son ambition de vouloir se rendre despotique dans le païs, le traitte de vrai perturbateur du repos publique. La cour garde un profond silence pendant que Mr. Vincelot parle, et ordonne que, les clauses n'ayant point été tenues, le dit terrain retourneroit à lui, dit Mr. Vincelot. ---- Cette aventure est du mois de May de l'année dernière, et a rendu l'Evêque beaucoup plus traitable avec Mr. Vincelot qu'il ne l'étoit avant.

Une autre, beaucoup plus forte, arriva quatre mois après. Un homme de la paroisse de St. Jean, dont Mr. Gaspé est seigneur, voulut se marier avec une de ses parentes assez éloignée, et demande la dispense à l'Evêque. Comme Mr. Briand aime un peu l'argent, il exige de ce pauvre malheureux une somme qui excédoit la valeur de sa terre. Cet homme au désespoir s'adresse d'abord à un Ministre Anglois pour le marier, qui le refuse, et lui donna les raisons de son refus. Mon homme prend son parti, assemble ses parens et ses amis, leur donne un festin, et avant de se mettre à table, fait paroître sa partie, et en présence du père de la fille et des convives, l'un et l'autre se donne mutuellement le consentement pour le mariage. L'homme, il est vrai, étoit punissable, mais Mr. Briand ne s'en tiens pas là ; il excom-  
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munie non seulement les mariés et les convives, mais toute la paroisse sans exception : en sorte que Mr. et Mad. Gaspé à une lieue et demie de la nopce, se trouvent enveloppés dans l'excommunication. Le Curé de l'Islette, qui dessert cette paroisse, de la part de l'Evêque se porte sur le lieu ; éteint la lampe du maître autel, renverse les cierges par terre, fait donner les coups de cloche, conforme les hosties, retire ciboire, calice, et soleil, lit la sentence d'excommunication, et déclare qu'elle durera tant que la paroisse gardera dans son sein ces deux rebels à l'Eglise. Cette pauvre paroisse, toute désolée, députe les marguilliers : ils se transportent à Québec, et à deux genoux viennent supplier l'Evêque. Il étoit alors illuminé d'une couple de bouteilles de bon Madeire (ce qui lui arrive quelque fois, et dans ces momens il ne fait pas bon de l'approcher :) il les traita comme les derniers des malheureux. *Non*, dit-il, *je ne vous releverai jamais de cette excommunication. Je vous apprendrai à craindre un Evêque ; et le païs, par votre exemple, deviendra plus soumis à l'Eglise. Je vous ordonne de chasser ces malheureux de chez vous ; et si vous obéissez, je verrai ce que j'aurai à faire.* Ces pauvres gens fondant en larmes à ses genoux ; " ils " sont sur leur terres, répondirent-ils, ce n'est " point à nous à les chasser, mais aux juges." *Retirez-vous, canaille*, leur dit-il, en ouvrant sa porte. Ils se relevèrent, mais un de la bande devenant plus hardi, au lieu de sortir comme  
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ses confrères, lui dit d'un ton ferme, en présence de Mr. Mabane, juge des plaidoyers communs, qui se trouva par hazard à cette scene ;

“ Monseigneur, si cet homme eut donné cent  
 “ cinquante piaftres que vous exigiez pour terminer le mariage de m<sup>elle</sup> une telle, il auroit  
 “ eu sa dispense, et n'auroit pas tombé dans  
 “ cette faute ; mais, Monseigneur, vous deviez le punir comme coupable, et non pas  
 “ toute une paroisse qui est innocente.” Mr. Mabane rit à ce début, et pria instamment l'Evêque de relever cette excommunication, qui resta néanmoins, et ne fut relevée que plus de deux mois après aux instantes suppliques de Monf. et de Mad. Gaspé. ---- Le nommé François le Clerc, qui étoit un de ces marguilliers, et de qui je tiens cette histoire, dit que l'Evêque, loin de rire comme faisoit Mr. Mabane, jettoit feu et flamme.

D'après ces emportemens, et de mille autres qu'un volume in folio auroit peine à contenir, surtout depuis l'arrivée du Gouverneur en ce pais, pourroit-on accuser d'humeur celui qui travailleroit à faire expulser cet homme de la colonie ? Non ; moi, ainsi que tous ceux du pais, ne lui donnent que cette année. Quand Londres sera instruit que le peu de réussite du Général, à mettre en armes les Canadiens pour en imposer aux Bostonnois rebels ; quand la cour saura que ce refus général tire sa source principale dans la conduite contradictoire de

cet Evêque, qui, après avoir entretenu la méintelligence entre les nouveaux et les anciens sujets depuis la conquête du pais jusqu'à présent, inspirant aux nouveaux un mépris souverain pour les anciens jusqu'au point de faire déclamer dans la chaire des Jésuites par un père Le Franc, que quiconque des Catholiques Romains a quelques liaisons avec les Protestants, étoit ainsi qu'eux hors de la vraie Eglise, conséquemment sans espoir de salut ; quand, dis-je, ce même Evêque s'avise aujourd'hui de répandre une lettre circulaire dans laquelle il annonce, " que nous sommes tous frères en " Jesus Christ, réunis sous le même Roy, que " nous devons par nôtre serment de fidélité " nous armer contre les Bostonnois dont nôtre " Roy commun est mécontent, &c." Quand la cour verra que le peuple, autrefois si soumis aux idées chimériques de cet Evêque, actuellement dépouillé du fanatisme, et las de ses violences, de ses emportemens, de ses fureurs, à la vue de cette lettre si contradictoire à sa conduite précédente, l'a pris en aversion et en horreur, ne le regardant que comme un homme inconséquent qui accorde sa religion sur son intérêt, elle comprendra qu'il est de trop dans le pais pour le bon ordre et l'harmonie qui doit regner entre les sujets et leur Roy ; de plus que la concorde, l'union, et la paix ne paroitra dans le Canada entre les anciens et les nouveaux sujets, que lorsque cet Evêque n'y fera plus, et que son diocèse sera gouverné par son

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son coadjuteur, enfant du pais et très paisible. En effet, cette lettre circulaire a revolté tout le pais ; et il sembleroit que les campagnes des trois départemens se seroient abouchées pour tenir le même langage ; ce qui ne peut être. “ Depuis quand, ont-ils dit, lorsque cette  
 “ lettre a paru, nôtre Evêque est-il devenu le  
 “ général du pais ? Son métier est de nous  
 “ faire des prêtres, et de nous édifier par sa  
 “ conduite. C’est aller contre son état, que  
 “ de nous donner pareil ordre ; et dez que  
 “ dans cette lettre, *il menace les rétifs de refus*  
 “ *de Sacremens, et promet aux obéissans des in-*  
 “ *dulgences* ; nous comprenons clairement qu’il  
 “ joue la religion, et veut prouver sa recon-  
 “ noissance à la cour des deux cens livres ster-  
 “ ling de pension qu’elle lui a accordées, et s’en  
 “ ménager deux cens autres. Cela s’accorde  
 “ admirablement bien avec ce qu’il n’a cessé  
 “ de nous annoncer dans toutes ses visites  
 “ depuis son arrivée dans le pais comme  
 “ Evêque. *Qu’il avoit refusé Douze-mille livres*  
 “ *d’appointemens, pour être plus libre dans son*  
 “ *ministère.* Si nôtre Général nous eut com-  
 “ mandés, nous nous serions expliqués avec lui,  
 “ mais dez que l’Evêque, sans doute comme  
 “ chef de nôtre religion, croit avoir un despo-  
 “ tisme sur nous, pour lui faire voir que nous  
 “ n’attendons de lui que des prêtres, une con-  
 “ duite régulière, plus douce, et moins am-  
 “ bitieuse, nous méprisons ses ordres, et nous  
 “ ne marcherons point.” — Ce raisonnement  
 est

est général dans toutes les campagnes, et il est étonnant de voir de simples habitans parler et penser comme de fins politiques ; bien d'autres que moi en sont émerveillés. Tant il est vrai que cette sottise soumission aux décisions épiscopales abrutit pendant un tems : on s'endort sur les abus jusqu'à ce que quelque événement nous chatouille, et nous fasse sortir de cet assoupissement : Ce premier effort fait, adieu fanatisme, adieu tout autre moyen que la raison des-approuve, &c. &c.

Translation of the foregoing Anecdotes concerning the conduct of JOHN OLIVER BRIAND, the Popish Bishop of Quebeck ; extracted from a letter written by a person of credit in the province of Quebeck, to his friend at London, about the end of September, 1775.

SEVEN years ago. Monsieur Vincelot, the Seigneur of Illette, at his requisition of the bishop of Quebeck in his visitation of the parishes of his diocese, gave a piece of ground, eight French arpents square, for the inhabitants of that parish to build a church upon. And he himself built upon it, at his own expence,

perce, an uncommonly spacious parsonage-house, in which the people of the parish might meet to hear mass during the time the church would take in building. And in this house the priest of the parish lived. At the end of two years Monsieur Briand, the bishop, at the request of the inhabitants of the higher part of the parish, appointed another place for the situation of the church which the inhabitants of it were to build : and the inhabitants accordingly begun to build the church in this latter place ; and in the course of three years (they proceeding but slowly in the work) made it fit for the performance of divine service. When the building of the church was completed, Mr. Vincelot resumed the possession of the former spot of ground and of the parsonage-house which he had built upon it ; grounding his right to make this resumption upon the non-performance of the condition upon which alone he had given this ground to the parish, which was that they should erect a church upon it. This proceeding gave offence to the bishop, who immediately sent orders to the curate of the parish to inform Mr. Vincelot, that what he had once given to the church, he could never after resume ; and that he, the bishop, therefore required him immediately to restore the piece of ground in question to the curate of the parish ; and that, if he refused to do so, he, the bishop, would immediately excommunicate him and all his family.

family. This threat was disregarded by Mr. Vincelot; and he continued to keep possession of the piece of ground. Upon this the prelate flew into a rage, and immediately commanded the same curate of the parish to acquaint Mr. Vincelot that he had excommunicated him, and had extended the excommunication to his wife also, if she joined with him in his refusal to restore the land. Upon this Mr. Vincelot brought the matter before one of the courts of Justice, and there openly reproached the bishop with his passionate and violent behaviour, and his inordinate ambition and desire of making himself an absolute ruler in the province, and declared him to be nothing less than a disturber of the public peace. The Judges observed a profound silence while Mr. Vincelot was speaking, and then decided, that, as the conditions upon which Mr. Vincelot had made the donation of that piece of land to the parish, had not been observed, the land must revert to Mr. Vincelot. This affair happened in the month of May, 1774, and was the occasion of the bishop's relaxing very much from the haughtiness and severity with which he had before treated Mr. Vincelot.

Another and a much stronger instance of this bishop's violence of temper happened about four months after the former. A man that lived in the parish of St. John, of which Monsieur Gaspé is the Seigneur, wanted to marry a  
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woman who was his cousin though in a pretty distant degree. In order to this he applied to the bishop for a dispensation to enable him to do so. As Mr. Briand is rather fond of money, he required of this poor man, for the dispensation he wanted, a sum of money which was greater than the whole value of the land he held in the parish. This threw the poor man into despair; and he went to the protestant minister of Quebeck, and desired him to marry him. But the minister refused to do so, and informed him of the reasons which induced him to make this refusal. Upon this the man resolves to take a new course of his own contriving. He invites his relations and friends to his house, and gives them a feast; and, before they sit down to table, he produces his intended bride; and, in the presence of the girl's father and of all the company there assembled, the two parties declare their consent to take each other for man and wife. Now this proceeding was undoubtedly blameable; and the man was liable to be punished for it. But the punishment of the guilty parties was not sufficient to satisfy the bishop's vengeance. Besides the man and the woman who had been thus married, he excommunicated all the company who had been present on the occasion, and all the inhabitants of the parish without exception; so that Monsieur Galpé the Seignior of the parish, and his Wife, who live at the distance of four miles and a half

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from the place where this offence was committed, were involved in this excommunication. The curate of Islette, who does the duty of the parish of St. John, was sent thither by the bishop to carry this sentence of excommunication into execution. He accordingly comes to the parish-church, and extinguishes the lamp of the principal altar, throws down the wax-tapers upon the ground, orders the bell to be rung, burns the consecrated bread, and carries away the box that contained it, the calice, and the sun, and reads the sentence of excommunication, and declares that it is to continue in force so long as the parish shall harbour within it those two rebels to the authority of the church. Alarmed at this terrible threat, the inhabitants of this unfortunate parish depute their church-wardens to the bishop to implore his mercy. The church-wardens repair to Queheck, and on their knees intreat the bishop to take off the excommunication. But they could make no impression on him. On the contrary he behaved to them with the greatest rudeness and contempt, saying, "*No! I will by no means take off this excommunication. I will teach you to dread the power of a bishop: and the rest of the province will, in consequence of your example, become more obedient to the church. I therefore command you to drive those two wretches from among you: and, if you obey this command, I will then consider what it may be proper for me to do with respect to the*

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*excommunication.*" The poor church-wardens, still on their knees, fell into tears at those harsh words, and said in answer to them, "*that, as these persons were upon their own land, they, the other parishioners, had no authority to drive them out of the parish, as his Lordship now required them to do: but that this could only be done by the Judges.*" "Get you gone, you blackguards, get out of the room this moment;" replied the bishop, and at the same time opened them the door. Upon this they rose from their kneeling posture, to go out of the room. But one of them, growing bolder than the rest, stayed behind in the room for a short space of time after the rest had quitted it, and said to the bishop in a steady tone of voice, in the hearing of Mr. Mabane, (one of the Judges of the court of common pleas,) who happened to be with the bishop at the time, "*My Lord, if this man had given you the 150 Dollars which you asked of him for a dispensation to marry his relation, you would have granted him the dispensation; and then he would not have been guilty of this offence. And, now my Lord, that he has been guilty of it, you ought to have confined your punishment to him alone, and not have extended it to the inhabitants of a whole parish, who are entirely innocent.*" Mr. Mabane was struck with the justness of the observation, and could not refrain from laughing when the man delivered it; and he earnestly interceded with the bishop to take off the communica-

tion. But he did not succeed. For the bishop thought fit to continue it for two months longer, and then at last took it off at the humble and urgent request of Monsieur and Madam Gaspé. This story was related to me by Francis Le Clerc, one of the church-wardens above-mentioned, who waited on the bishop at the desire of the other inhabitants of the parish on the occasion above-recited.

After these instances of this bishop's pride and passion, and a thousand others of the same kind, which a folio volume would not be large enough to contain, (and which have happened more frequently since the Governour's return into this country than before) can a man be justly accused of censoriousness or ill-nature who should use his endeavours to get this person sent out of the colony? No, surely. And accordingly there are great numbers of people in the province who are resolved to bear with him only one year longer, to try if he will alter his behaviour, before they openly prefer complaints against him and petition the government to remove him. When it shall be generally known in London that the little success which General Carleton has met with in his endeavours to arm the Canadians in order to restrain the New-England rebels; — I say, when the government in England shall be informed that this general refusal of the Canadians to engage in this service is principally owing

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owing to the inconsistency of the bishop's conduct, they will readily conclude, that his continuance in the province can be no way beneficial to it. His whole business ever since the conquest of the country has been to keep up a spirit of dis-union and mis-understanding between the Canadian and English inhabitants of the province, and to inspire the former with a sovereign contempt and abhorrence for the latter; even so far as to encourage one father Le Franc, a Jesuit-preacher, to declare from the pulpit in the Jesuit's chapel, "*that, whatever persons of the Roman-Catholick religion have any connections or intercourse with the protestants, are out of the true church, as well as the protestants, and consequently are without hope of eternal salvation.*" Yet this same man has this year sent about a circular letter in which he holds a quite different language, acknowledging therein, "*that all the inhabitants of the province, whether protestants or papists, are brothers in Christ-Jesus, and fellow-subjects of the same king, to whom we all have sworn and owe allegiance: and declaring, that, in consequence of our allegiance, we are bound in duty to take arms against the New-Englanders who have fallen under the displeasure of our common Sovereign, &c.*" The inconsistency of this language with the bishop's former doctrine and conduct is so glaring that it has amazed and shocked all the Canadians in the province: and they have looked upon him, ever since they

they have seen this circular letter, as a man who has no fixed principles of conduct, but makes his religion bend to suit his interest. It is surprizing to observe how much this circular letter has disgusted the whole body of the Canadians. One would think, from the uniformity of the sentiments they express concerning it, that the inhabitants of the three districts of Quebeck, Three Rivers, and Montreal had had meetings with each other to confer together concerning it; which however is impossible. " *Since when is it, (did they say with one voice upon the sight of that circular Letter,) that our bishop is become General of the country? We thought that the business of his office had been to ordain new priests for us when they were wanted, and to edify us and encourage us to virtue and piety by the example of his own regular and virtuous conduct. It is acting against the nature of his office to send us such an order as we have now received from him. And when we read in this letter the passages in which he threatens those who shall prove refractory with the deprivation of the sacraments of the church, and promises indulgences to those who shall comply with this exhortation, we easily conclude that he is making a tool of our religion, and is endeavouring to shew his gratitude to the government for the pension of two hundred pounds sterling a year which he has lately received from it, and to entitle himself, if he can, to an addition of two hundred more. We wonder in what manner he will undertake*

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to reconcile this attention to his pecuniary interest to the declarations he has been continually making to us at every visitation of his diocese since his arrival in the country in the character of bishop, of his having refused a salary of 12000 livres (or 500l. sterling) a year, that had been offered him by the government, in order that he might preserve his independency, and act with the greater freedom in the exercise of his episcopal office. If, instead of our bishop, our general had, on this occasion, commanded us to take arms, we should have endeavoured to give him satisfaction. But when we find our bishop, in consequence of his being our head in matters of religion, assume an absolute authority over us with respect to matters of a totally different nature, we are determined to resist this usurped species of authority, and to convince him that the only good offices we expect, or desire, at his hands, are ; to ordain new priests for us when they are wanted, to set us an example of virtuous and godly living, and to behave towards us with more mildness and moderation than he has hitherto done, and not give himself up to a spirit of ambition. And with this view we are resolved to neglect his military orders, and not take arms on this occasion." This is the kind of reasoning that one hears in almost every village throughout the province from the mouths of the common peasants that inhabit them, who seem on the present occasion to be turned into grave and subtle politicians, to the great astonishment of many other people, who are well acquainted

acquainted with this province, as well as myself. So true is it that a blind submission to episcopal authority can only prevail in a country for a time, but cannot continue its influence over men's minds when some alarming occasion offers that rouses them to examine its nature. When once they have made this first exertion, and dared to begin this inquiry, superstitious opinions are very soon discarded, and reason and common sense resume their proper influence over the mind.

Remark on the foregoing anecdotes concerning the Popish bishop of Quebeck.

THESE anecdotes seem to prove that it was an injudicious indulgence to the more bigotted part of the Roman-Catholick inhabitants of Canada to permit any person to exercise the office of a popish bishop in that province, as it has operated as a *center of union* to the Roman-Catholicks of that province, by which they have been kept steady in their attachment to the Roman-Catholick religion through the terrours of excommunications and other episcopal censures, and have been thereby prevented from abandoning the errors of popery, or some of them, and embracing the tenets of the protestant religion, even though they may have been secretly inclined to do so. And it has likewise,

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likewise, we see, tended to keep up in the Roman-Catholicks an averſion to the proteſtant inhabitants, and to prevent that free intercourſe between them which would otherwiſe, probably, have taken place, and which indeed, I am aſſured, had begun to take place before the year 1766, when Monſieur Briand returned into the province in the character of biſhop. He ſeems, however, at laſt, by a violent and indiſcreet uſe of his epiſcopal authority, to have loſt much of his influence in the province; which I conſider as a very fortunate circumſtance. And the acceptance of a penſion of 200l. ſterling a year from the crown ſeems to have contributed very much to this effect. And on this account, I muſt confeſs, I eſteem that penſion to have been moſt properly beſtowed.

The province of Quebeck had been without a biſhop from the year 1760 to the year 1766, when Monſieur Briand was permitted to return into it in that character. He had only a verbal permiſſion to do ſo, without any licence, or other authority in writing, from the king's ma- jeſty, or any of his miniſters for that purpoſe. And there is reaſon to think that he had ſtipulated with the perſons by whoſe recommenda- tion he was permitted to return into the province in that character, that he would exerciſe only that part of his ſpiritual authority by which he was enabled to ordain prieſts, and conſecrate

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new churches and chapels and burying-grounds, and perform the like inoffensive offices, but would not make use of his spiritual thunders, or the power of excommunicating persons, or causing them to be hindered from receiving the sacraments, or of depriving priests, or suspending them from the exercise of their spiritual functions, or of interdicting divine worship in the churches or chapels of the province. These latter powers, I say, it is probable he had promised not to exert. At least it is certain that when, upon his arrival in the province in the character of bishop, his friends received him with the ceremony and respect that had usually been paid to his predecessors in that high office, he rather declined those compliments, and made answer to them, " that he did not come into the province to be a bishop upon the same high footing as his predecessors in the time of the French government, and was not therefore intitled, and did not desire, to be treated with the same ceremony and respect as had been used towards them; but that he was *un simple faiseur de prêtres*, a mere ordainer of new priests." That, I have been well assured, was the expression he used on that occasion. It is probable that, without these stipulations, he would not have been permitted to return into the province in the character of bishop. In pursuance of this humble plan, (which he seems to have promised to observe,) he wore for the first month, or two, after his arrival at Quebec in  
 June,

June, 1766, only a common black gown, like the other Roman-Catholick priests. But in a short time he grew tired of doing so, and put on a purple robe, with a golden cross at his breast, which are the usual ensigns of the episcopal dignity among the Roman-Catholicks. And since that time he has sufficiently exercised the tremendous powers of suspending and depriving priests, excommunicating and depriving persons of the sacraments, and interdicting divine worship in churches and chapels. So little are promises and stipulations of this kind to be depended on!

We have seen that the Canadians had done without a bishop for six years, to wit, from 1760 to 1766, when Monsieur Briand returned into the province in that character. And I have been well assured that the greater part of the Canadians were very well satisfied without one, and that it was only the more zealous and high-church party amongst them that wished to have a bishop resident amongst them for the greater splendour and more permanent establishment of their religion; the rest of the people being very well contented with the very ample, and indeed compleat, toleration of the worship of it, in conformity to the capitulation and definitive treaty of peace. And they all had, in a manner, given up the expectation of ever having another Popish bishop, in the course of those six years that they were without one, and

were prepared to acquiesce in the want of one, when Monsieur Briand returned into the province.

The pretext which this gentleman and his patrons made use of with his Majesty's Ministers of State in the year 1766, to induce them to consent to his returning into the province in the character of a Roman-Catholick bishop, was the necessity of providing new priests to supply the vacant livings, or those which should become vacant hereafter by the deaths of their incumbents. " You have granted, said they, " to the Canadians by the treaty of peace, the " liberty of publickly exercising the worship " of their religion. To the enjoyment of this " privilege Roman-Catholick priests are necessary. There is at present a great want of " such priests; there being many parishes at " this time in the province that have no priests " to do duty in them. And when the priests " now in the province shall be dead, their " places must be supplied by new ones. Now " the question is, how these new priests shall " be procured? Will you permit new French " priests to come into the province from old " France, from time to time, to supply these " vacant livings? That would, surely, be dangerous: because these French priests might be " spies for the king of France; or, at least, " would be well affected to his interest, and " would keep up an attachment to old France

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“ in the minds of the Canadians, and a desire  
 “ of returning to that government. Is it not  
 “ much better to breed up the young Cana-  
 “ dians to the Romish church in the semina-  
 “ ries, or colleges, which are already establish-  
 “ ed in the province, and then to have them  
 “ ordained in the province itself, by one of his  
 “ Majesty’s own subjects, who will be con-  
 “ stantly resident in the province? and, for  
 “ this purpose to permit a Roman-Catholick  
 “ bishop to reside in the province, by whom  
 “ those young Canadians may be so ordained?”

This was the argument, as I have reason to  
 believe, by which his Majesty’s Ministers, in  
 1766, were prevailed upon to connive at Mon-  
 sieur Briand’s returning into the province of  
 Quebec in the character of bishop: I say,  
*connive* at his doing so; because, as they did  
 not procure for him any licence or permission  
 in writing to authorize him to do so, it can  
 hardly be called by any other name. And it  
 must here be observed, that even the Quebec  
 act itself (which restores to the Romish priests  
 their legal right to their tythes, and other an-  
 cient dues from their Roman-Catholick pa-  
 rishioners) does no more than connive at the  
 bishop’s exercising the episcopal authority in  
 Canada, there being no clause in it that im-  
 powers him to do so, or that makes mention  
 of his residence in the province.

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The above-mentioned argument is certainly specious: but I do not think it conclusive. For it would have been easy to have obtained the advantages, which are the ground of it, that is, the exclusion of fresh priests coming into the province from <sup>the</sup> France, without permitting a Popish bishop to reside in it, by pursuing the following plan. The seminary, or college, at Quebeck might have been preserved, with all its members and teachers of Popish divinity and its revenues, (which are said to amount to six or seven hundred pounds sterling a year,) for the education of young Canadians to the profession of the priesthood: and when they had attained the proper age for taking orders in that church, these young men might have been sent over to England at the King's expence with the Governour's recommendation to his Majesty's Secretary of State for America, as young men of good behaviour and principles, that were fit to be made priests and hold benefices in the province. And from England they might have been sent to Munster in Germany, or to the Popish canton of Lucerne in Switzerland, (attended by some proper and trusty companion, who should have taken care that they should not have set their foot in old France) with recommendations, if they had gone to Switzerland, from the Secretary of State for America to his Majesty's Resident, or other Minister, to the Swiss Cantons; and there they might have been ordained to the priesthood of the  
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church of Rome by the bishop of Munster, or Lucerne, or such other Roman-Catholick district, (not in old France,) as his Majesty, in his royal Wisdom, should have thought fit to send them to. And when thus ordained priests of the church of Rome by such foreign Popish bishop, they should have returned to England, and from thence to Quebeck by the first convenient opportunities, at the king's expence. Such a voyage to Europe would probably have been considered, by the young candidates for the priesthood who would have had occasion to take it, as a party of pleasure rather than a hardship. And the expence of it to the Publick would have been trifling; perhaps 300l. or 400l. once in three or four years. For, as the whole number of parishes in the province is but 128, (at least it was no greater in the year 1767; I know not how many new parishes may have been created since:) a supply of two new priests a year, or six or seven every three years, would probably have been sufficient to keep the benefices always full. By this obvious and easy method of procuring new priests for the support of the Roman-Catholick religion agreeably to the toleration promised by the capitulation and treaty of Peace, the supposed necessity of permitting a Popish bishop to reside in the province might have been avoided. But, since a Popish bishop is permitted to reside there, I am extremely glad he has a pension from the crown, and that his

his acceptance of it has lessened his influence over the French and Roman-Catholick inhabitants of the province in the manner represented in the foregoing papers.

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We have seen above in the *Account of the proceedings, &c.* page 112, the Petition of a small number of the French inhabitants of the province of Quebeck to the King's Majesty concerning the revival of the French laws and the admission of Roman-Catholicks to places of trust and profit, which was made the foundation of the late Quebeck act. And we have seen in the Petition of the British and other protestant inhabitants of the province to the house of Commons against the said Quebeck act, that they declare, "*that the said French petition had never been imparted to the inhabitants of the province in general, that is, to the freeholders, merchants, and traders of the province, who are equally alarmed with them (the said British and other inhabitants,) at the Canadian laws being to take place, but was in a secret manner carried about and signed by a few of the Seigneurs, Chevaliers [de Saint Louis] [French] Advocates and others in their confidence, at the suggestion and under the influence of their priests.*" See the *Account of the Proceedings, &c.* page 257. It is therefore to the influence of the  
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Romish priests of the province of Quebeck, who act under the authority and by the direction of their bishop, that we are to ascribe, in a great measure, the sending over that French petition in the beginning of the year 1774, which was made the foundation of the Quebeck act. And I have hear'd by other accounts, that the said bishop's influence was very powerfully exerted to procure the signatures to that petition : so that the present revival of the French laws in all civil matters by the late Quebeck act is in a great degree owing to that bishop. This is confirmed by the following passage, which is contained in a paper writ by a French Roman-Catholick of very good sense in the province of Quebeck about the month of November, 1774, a few months after the arrival of the said Quebeck act in the province, and during the first great and general consternation into which the great body of the inhabitants of the province, both French and English, Roman-Catholicks and Protestants, with the few exceptions above-mentioned, were thrown by its contents.

*Il faut observer que, si la loi Angloise n'a pas en lieu dans le país, et que celle des François a pris sa place, l'évêque de Québec est le seul auteur de la chose:-----Que, si quelques seigneurs ont approuvé cet arrangement, que c'est ni du goût des bourgeois ni des habitants, qui se voyent*

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*actuellement gênés tel qu'ils l'étoient du temps des François :----Que la loi Angloise, qui avoit subsisté depuis le siège, avoit mis tout le monde au même niveau ; et que tout le monde étoit content."*

*Translation of the foregoing French passage.*

“ It must be observed, that the suppression  
 “ of the English law in the province by this  
 “ act of parliament, to make way for the re-  
 “ vival of the French law, is intirely owing to  
 “ the bishop of Quebeck :----That, though it  
 “ may be true that a few of the seigniors of  
 “ the province have expressed an approbation  
 “ of this new settlement of its laws and go-  
 “ vernment, it is not at all suited to the tastes  
 “ of either the merchants and other inhabitants  
 “ of the towns in the province, or the peasants ;  
 “ all of whom now conceive themselves to be  
 “ reduced to the same uneasy state of servitude  
 “ to the noblese and the officers of government  
 “ in which they were kept in the time of the  
 “ French government :-----That the laws of  
 “ England, which had been in force in the  
 “ province ever since the conquest of it by the  
 “ British arms, had introduced an equality of  
 “ freedom and independency through all ranks  
 “ of people in the province, and had thereby  
 “ given general satisfaction to them all.”

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From this and all the other preceding papers I think it is sufficiently evident that the revival of the whole body of the French laws in civil matters in the province of Quebeck by the late act of parliament, is by no means agreeable to the bulk of the French, or Canadian, inhabitants of the province, any more than to the English settlers in it. And they are likewise but little pleased (as I am informed) with that part of the said act which has revived the compulsive obligation of the Roman-Catholicks to pay the priests their tythes and other antient dues. The reason of this dissatisfaction is set forth in the following paper, which was published in the form of a letter in the Public Advertiser of December 29, 1775.

On the dissatisfaction of the Cãnadians  
at the re-establishment of popery in  
Canada by the late Quebeck act.

December 9, 1775.

**I**T may seem strange, Mr. Printer, to many of your readers, that the re-establishment of the popish religion in Canada, by giving the priests a legal right to their tythes, can have given the Roman-Catholicks in that province any disgust, as they are known to be strongly attached to that religion: yet, that it has done

so in a very high degree, I am well assured by some gentlemen of sense and credit that are lately arrived here from that country. This event does not indeed much surprize those persons who were acquainted with the state of that province before the passing of the Quebeck bill; for they knew how amply the popish religion was tolerated there before that time by virtue of the capitulation, and the remarkable spirit of mildness and justice which then induced both the government of the province and the English and other protestant inhabitants of it, to observe and execute that sacred article of the capitulation to its utmost extent; and they had been witnesses of the great astonishment and satisfaction which this high degree of toleration had excited amongst the Canadians; which indeed was so great, that the noblesse of the province did not venture in their petition of December, 1773, (which was made the foundation of the late Quebeck-act) to make any complaint upon this head; for the few persons who signed that petition, (who, including a boy of 13 years of age, and some other very young persons, amounted only to 65 persons, in the district of Montreal) say nothing of a want of freedom in the exercise of their religion, but complain only of the exclusion of Roman-Catholicks from places of trust and profit, which is an inconvenience of a quite different kind, and which even those of the protestant dissenters from the Church of England, who comply with the terms  
of

of the toleration act, are exposed to here in England. But, to return to the toleration of the Roman-Catholick religion in Canada before the late Quebeck-act,—I say, that it was so compleat as to astonish the Canadians, and give them the fullest satisfaction. The churches and chapels of the province were all left entirely in their hands: their priests possessed the glebe lands and parsonage houses: they wore their habits on all occasions and in all places, and performed their religious exercises and ceremonies in their antient and accustomed manner, and even had their publick processions of the host through the streets of Quebeck and Montreal, as often as they pleased, and without the least molestation or insult, or even ridicule, from the protestants in the province.—The protestants contented themselves with borrowing of the Recollet monks at Quebeck, and of the Ursuline nuns at Montreal, by their leave and favour, the use of their respective chapels for one hour in a week, every Sunday morning, for the performance of divine service. Such was the toleration of the Roman-Catholick religion before the late Quebeck-act. It could not be more compleat, and the Canadians were perfectly satisfied with it. Yet it was *but* a toleration; the support of the religion depended entirely on the free choice and will of the Canadians, and no legal process could be used in the courts of justice, to compel them to pay the tythes, and other former taxes, for the maintenance of their priests.

✓ priests. And this the Canadians well knew and were much pleased with, because (they said) it made their priests more condescending and affable in their behaviour to them, and more diligent in the discharge of their duty.

✓ This being the case, I believe, Mr. Printer, it will no longer appear surprising to your readers, that the Canadians should not be pleased with that clause in the late act, which, without increasing the freedom of the exercise of their religion (for that, in truth, could not be increased) has unnecessarily and officiously revived the compulsive obligation under which they had formerly lain, to pay the priests their tythes, but from which they had lived exempt and happy for the space of fifteen years. I say, this compulsive obligation to pay the tythes, has been revived *unnecessarily and officiously*, because no part of the above-mentioned petition of a few of the noblesse (though obtained, as I am credibly informed, in the most clandestine manner, and by the utmost exertion of the bishop's influence) requested the revival of it: and much less was there the least reason given to the government to suppose that the rest of the Canadians, the merchants, tradesmen, and yeomanry of the province; that is, in a word, the great body of the Canadian PEOPLE, (whose wishes alone ought to have been consulted on this occasion) were in the least desirous of it. And in fact, now that this obligation is revived, they are equally surpris'd and disgust'd at it. And, I presume,

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presume, the impartial part of your readers, Mr. Printer, when they read this plain and true state of this matter, will no longer wonder at their being so.

I am your humble servant, &c.

P. S. I am told that the Canadians are at this time under dreadful alarms at the apprehension of the numerous suits for tythes which they expect their priests will bring against them, as soon as any Courts of Civil Judicature shall be opened in the province. For by the late Act of Parliament, all the former Courts of Justice were abolished on the 1st day of May last, and no others were erected in their stead; the consequence of which has been, that the province has continued in a state of anarchy, at least with respect to Civil Matters, ever since that fatal day. For the new Legislative Council, (consisting of Monsieur de Bellestre, Monsieur de Contrecoeur, Monsieur La Corne de Saint Luc, and others,) to whom the delicate and difficult business of erecting new Courts of Judicature in the province, to supply the place of the old ones, was entrusted by the late Act, have not yet exercised their Legislative Talents in the discharge of this important duty. I mean on the 15th of last October: so that from the 1st of May till that day no civil action of any kind could be brought in the province. It is supposed, however, that this state of things cannot

not last long; and that the Governour and his Legislative Counsellors, will soon meet again to consult upon this very urgent business. And happy will it then be for the province, if they listen more to the advice of Mr. Hey, the Chief Justice of it (who is a Man of real understanding) than they did at their last meeting, when his suggestions in favour of the re-establishment of the Commercial Laws of England and the Trial by Jury, (to be had at the option of the parties, with the consent and approbation of the Judge) were opposed by Monsieur La Corne de Saint Luc, and the other new Roman Catholick Members of the Council, till their Meetings were broke up by the news of another invasion of the province, by the troops of the United Colonies near Montreal.

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The Quebec act abolished all the courts of justice in the province on the first day of May, 1775, by the following remarkable clause: "*Be it further enacted by the authority aforesaid, that the said proclamation, (of October, 1763) so far as the same relates to the said province of Quebec;---and the commission under the authority whereof the government of the said province is at present administered;---and all and every the ordinance and ordinances made by the Governour and Council of Quebec for the time being, relative to* the

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*the civil government and administration of justice in the said province;— and all commissions to judges and other officers thereof;— be, and the same are, hereby revoked, annulled, and made void, from and after the first day of May, one thousand, seven hundred, and seventy-five.”* And it did not establish any other courts of justice in the province in the room of those which it so abolished; but only recognized a power in the crown to establish them. The clause by which this power is recognized in the crown is as follows. “*And be it further enacted by the authority aforesaid, That nothing herein contained shall extend, or be construed to extend, to prevent or hinder his Majesty, his heirs and successors, by his or their letters patent under the great seal of Great-Britain, from erecting, constituting, or appointing, such courts of criminal, civil, and ecclesiastical, jurisdiction within and for the said province of Quebec, and appointing, from time to time, the judges and officers thereof, as his Majesty, his heirs and successors shall think necessary and proper for the circumstances of the said province.”*

In pursuance of this clause it should seem, that some instrument ought to have been prepared by his Majesty's authority, and passed under the great seal of Great-Britain, as soon as possible after the passing of the Quebec act, to erect other courts of justice in the province, which should begin to sit and exercise their

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powers

powers of judicature on the said first day of May, 1775, in lieu of the former courts of justice, which were to cease and be abolished on that day. But no such instrument was prepared: infomuch that, when the first day of May arrived, the province must have fallen into a state of perfect anarchy by means of the first of the two foregoing clauses of the Quebeck act, if Governour Carleton had not endeavoured to prevent it by appointing three magistrates, whom he called *Conservators of the Peace*, for the district of Quebeck, and as many more for the district of Montreal. Those appointed for the district of Quebeck were Mr. Adam Mabane and Mr. Thomas Dun, (who had been the judges of the court of Common-Pleas for that district before the suppression of that court on the said first day of May, 1775, by the Quebeck act,) and Monsieur Claude Panet, a French Roman-Catholick lawyer and notary at Quebeck: and those appointed for the district of Montreal were Captain John Frazer and Mr. John Marteilhe, (who had been the judges of the court of Common-Pleas for that district before the suppression of that court on the said first day of May, 1775, by the Quebeck act,) and Monsieur René Ovide Hertel de Rouville, a French Roman-Catholick gentleman of Montreal, who had been a judge at Three Rivers in the time of the French government.

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Soon after the appointment of these conservators of the peace, an accident happened at Montreal which gave occasion to those of that district to exercise their authority in a very remarkable manner. It was as follows.

On the morning of the 1st of May, some ill-disposed persons (who remain to this hour undiscovered) had daubed over the king's bust at Montreal with black, and hung a cross at the end of it, which they indecently ornamented with a mitre and a string of beads, and writ under it these opprobrious words, 'Voici le Pape du Canada, et le Sot des Anglicans;' that is, 'This is the Pope of Canada and the Fool of England.'

This act was undoubtedly seditious, and deserving of punishment; but it was not, and I presume few Englishmen will think it ought to have been, a capital crime. However, it seems that Monsieur de Bellestre, a French gentleman in the province of Quebeck, and one of the new Roman-Catholick members of the legislative council established in it, was of a different opinion; for as the people were gathered together on the next day to hear a proclamation made of a reward for the discovery of the persons who had committed this offence (which reward was no less than one hundred guineas, which the English inhabitants of Montreal had immediately subscribed at a general meeting,

and which was proclaimed by beat of drum at the head of the grenadiers of the 26th regiment) this very loyal French gentleman said, ' that he ' would give 100l. out of his own pocket to ' find out the persons who had done this, and ' see them severely punished and sent out of ' the province; for that they deserved to be ' hanged, and, if they were in France, would ' be so."

Upon hearing this severe opinion, a young English merchant, of the name of Franks, who is settled at Montreal, and who at that time happened to be standing near Monsieur de Bellestre, replied to him in these words, " On ne pend pas pour si peu de choses en Angleterre;" that is, " In England men are not hanged for such small offences;" which words he repeated twice or three times. This provoked Monsieur de Bellestre to such a degree, that, after giving the young man much opprobrious language, he at last proceeded to blows, struck him in the face, and pulled him by the nose; upon which the other gave him a blow in the face, which knocked him down. The next day, May the 3d, upon a complaint of Monsieur de Bellestre to the said conservators of the peace for the district of Montreal, not of the blow he had received from Franks (for to this he was conscious he had given occasion by striking him first) but of the words pronounced by the latter, to wit, " that in England people  
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“ were not hanged for such small offences ;” these conservators issued the warrant here-under following for committing young Franks to prison : and he was accordingly carried thither by a party of soldiers with bayonets fixed ; and 10,000*l.* bail, that was offered to procure his liberty, and be security for his appearance to take his trial for this offence, was refused. And there he continued for a week ; at the end of which time the same conservators of the peace (by the direction, as it is supposed, of Governour Carleton) ordered him to be discharged without any bail at all. The warrant of commitment was as follows :

“ District de Montréal.

“ Par Jean Fraser, Jean Marteilhe, et René Ovide Hertel de Rouville, ecuyers, juges et conservateurs de la paix dans la district de Montréal.

“ François Marie Picoté de Bellestre, ecuyer, ayant fait ferment sur les Saints Evangiles, que, mardi le deuxième May courant, s'étant arrêté pour entendre la publication d'un ban à l'occasion des misérables qui avoient insulté le buste de sa Majesté, il auroit dit hautement, qu'ils mériteroient d'être pendus ; à qui le nommé Salisbury Franks auroit répondu avec aigreur, “ que l'on ne pendoit point pour si peu de choses, et que cela ne valoit point la  
“ peine ;”

“ peine ;” ce qu’il avoit différentes fois, publi-  
“ quement et à haute voix ré-itéré :

“ Nous. ayant égard à la ditte plainte, et con-  
“ sidérant combien tout bon citoyen doit en-  
“ visager avec horreur un acte aussi atroce, et  
“ que, par conséquence, tous les propos qui tendent  
“ à dire que c’est peu de choses, doivent être réputés  
“ criminels ;

“ Pour ces causes nous vous autorisons et  
“ nous vous ordonnons de conduire Salisbury  
“ Franks dans la prison de cette ville, pour y  
“ être détenu jusqu’à ce qu’il en soit dé-  
“ chargé par la loi. Et pour cela ce warrant  
“ vour servira de décharge.

“ Donné à Montréal sous nos sceaux et  
“ feings le troisiéme jour de May, 1775.

“ Seigned,

“ JOHN FRASER,

“ JOHN MARTEILHE,

“ HERTEL DE ROUVILLE.

“ Aux bailiffs de Montréal.”

The warrant to the jailor to receive and de-  
tain him, was as follows :

“ Ycu

" You are hereby ordered to receive the  
" within mentioned prisoner, and keep him  
" in custody, till by law discharged.

" J. F. with the initial letters of judge  
" Frazer's name.

" To Mr. Mackay, gaol-keeper."

The English of the above warrant of com-  
mitment is as follows :

" District of Montreal.

" By John Frazer, John Marteilhe, and René  
" Ovide Hertel de Rouville, esquires, judges  
" and conservators of the peace in the district  
" of Montreal.

" Whereas Francis Mary Picôté de Bellestre,  
" esquire, has made oath on the Holy Gospels,  
" that, on Tuesday the second day of this pre-  
" sent month of May, as he was standing still  
" in the street to hear a proclamation published,  
" concerning those wretches who had insulted  
" his Majesty's bust, he had openly declared  
" that he thought they deserved to be hanged :  
" And that thereupon one Salisbury Franks  
" had answered with sharpness, " that it was  
" not usual to hang people for such small of-  
" fences, and that it was not worth while to  
" do so ;" and that he had repeated these  
" words several times, and with a loud  
" voice ;

" We,

“ We, having regard to the said complaint,  
“ and considering that every good subject  
“ ought to look upon the said insult to his  
“ Majesty's Bust as an act of the most atrocious  
“ nature, and as deserving of the utmost ab-  
“ horrence ; and that therefore all declara-  
“ tions made in conversation that tend to  
“ affirm it to be a small offence, ought to be  
“ esteemed criminal ;

“ Do, for these reasons, authorize and com-  
“ mand you to convey the said Salisbury Franks  
“ to the prison of this town, to be there de-  
“ tained until he shall be thence discharged  
“ according to law. And for so doing, this  
“ warrant shall be your justification.

“ Given at Montreal, under our hands  
“ and seals on the third day of May,  
“ 1775.

Signed,

“ JOHN FRASER,  
“ JOHN MARTEILHE,  
“ HERTEL DE ROUVILLE.

The warrant for his discharge, on the 9th  
day of the same month by the same magi-  
strates, was as follows :

“ District



“ District of Montreal.

“ By John Fraser, John Marteilhe, and René  
“ Ovide Hertel, esquires and conservators of  
“ the peace in the said district in the province  
“ of Quebec.

“ To the keeper of the jail in Montreal.

“ Whereas David Salisbury Franks is now  
“ in your custody, in virtue of our warrant  
“ duly sealed and signed ; these are now to  
“ command you to forbear detaining any longer  
“ the said David Salisbury Franks, but to suffer  
“ him to go at large wherever he pleases, and  
“ that without fees. And for so doing, this  
“ will be your sufficient warrant.

“ Given under our hands and seals at Mont-  
“ real the 9th of May, 1775.

“ Signed,

“ JOHN FRASER,

“ MARTEILHE,

“ HERTEL DE ROUVILLE.”

The reader will make his own reflections  
on the style of the above warrant of commit-  
ment, and the spirit of the new government of  
that unhappy province that appears in it.

The occasion of issuing this warrant is related more minutely in the following narrative of the whole transaction, which was written by the poor young man himself who was the subject of it, during the time of his confinement. It is writ with such an air of truth and modesty, and with such strong professions of loyalty to his Majesty, as cannot fail to increase that indignation in the breasts of all the readers of it, which they, doubtless, must have felt at the relation of the unworthy treatment he has met with, and the perusal of that strange, arbitrary, warrant, by which he was imprisoned.

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A NARRATIVE of the quarrel that happened on the second day of last May, 1775, at Montreal, in the province of Quebeck, between Monsieur De Bellestre, a French gentleman of that province, and Mr. David Salisbury Franks, a young English merchant, or trader, of the same place, and which was the occasion of the imprisonment of the latter by Captain John Frazer, Mr. John Marteilhe, and Monsieur René Ovide Hertel de Rouville, conservators of the peace for the district of Montreal. Written by Mr. Franks himself during his confinement.

WHEREAS my affair with captain Bellestre (for which I am confined in the prison of this city) is not perfectly known to the publick, I take this method of shewing to every impartial person a true state of it from the beginning.

On the 2d of May I was standing with Mr. Kay, Mr. Montigny, Mr. Rousseau, and several others at the corner of the Seminary Garden,

opposite to Mr. Kay's house. We were all waiting to hear the publication of a reward offered to find out the perpetrators of that insult offered to the Marble Bust of his Majesty last 30th of April. The drums and cryer were just coming up, and our discourse turned, as was natural, on that subject. We all condemned it as an atrocious action that deserved a very heavy punishment. I asked, what could be done to the person who committed the action, if he was found out. Our opinions differed upon this point: and just at this instant Monsieur De Bellestre intruded into our company, and said, in a very haughty tone to me by way of answer to this question, " Il seroit pendu;" that is, " that he would be hanged." I turned about, and replied very coolly, " that I thought that by the law " it was not death." Monsieur De Bellestre then said, " that I spoke like a fool and a " *babillard*, or idle prater." I told him, that I was not used to such language; and, to avoid hearing any more of this kind, I stepped a little from him. He then came up to me again, and very imperiously asked me, what I knew about the matter, and gave me a push pretty roughly on the arm. I told him I did not understand such usage. He then called me by some other bad name in French, which I do not remember; and, upon my returning it, he called me *Jean Foutre*. I gave him back the *Jean Foutre*; upon which he took me by

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by the nose, and twisted it. This was a second assault, and of so violent a kind, that in return I caught hold of him by the coat, and he at the same time caught hold of me by the hair. I dealt him a few strokes on the face, and he at the same time gave me some knocks, and one (which, I think, was with the butt end of his stick) over the eye. Mr. Montigny, to the best of my knowledge, cried out at first, "Laissez-les battre;" (that is, "let them fight it out.") But finding, I had the advantage, he took me off from Monsieur De Bellestre by the hair. Mr. De Bellestre then again made up to me to strike me with his stick, but was prevented by the Gentlemen near us. I then went away, after taking the bystanders to witness, that he not only abused and assaulted me in the publick street, but also called me, *foutu coquin*, twice or thrice, for which I told him, I would prosecute him. In the afternoon of the same day I waited on Mr. Marteilhe, and opened the affair to him. He told me to sit down, and write out my deposition; and when I had done so, and read it to him (being in substance as above) he told me, he would not administer the oath to me, but bid me call upon him in the morning of the ensuing day. Upon this I went over to Mr. Frazer's house to make my deposition before him; but he was gone into the country. And on this day (the 4th of May, the day next after that on which this quarrel happened)

I called

I called again on Mr. Marteilhe, who told me to go over to Mr. Frazer's, as he and Monsieur De Rouville were then together. I accordingly went thither, and, after having waited there some time, I was admitted to Mr. Rouville and Mr. Frazer. Mr. Frazer asked me if I had any business with him: upon which I presented to him my intended deposition ready drawn up. He took it, and read it over, and then asked me very angrily, "if I was the person who had treated Monsieur De Bellestre in so scandalous a manner." I told him, "yes; and that such abuse as I had then received from Mr. De Bellestre I could not bear from any man on earth but my prince, or his representative; and that my education and rank in life, though not high, were yet above such treatment." He said I had no business to enter into altercation upon the subject. I answered, "that I had not done so, and that I had not intruded upon Monsieur De Bellestre, but that he had come into the company with which I was conversing; and that I had rather avoided than sought to dispute with him on the subject. And then I desired Mr. Frazer to take my deposition, that I might send it to my father at Quebeck for him to shew it to his Excellency Governour Carleton, to whom I had the honour to be known, hoping that his Excellency would be convinced by it that I was far from being a disturber of the peace, or disaffected

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“ to Government. And I added, that I was  
 “ of too little consequence to create any dis-  
 “ turbance, but that what little power I had  
 “ should be always exerted in support of his  
 “ Majesty’s authority; for that my heart was  
 “ truly loyal and upright; and I was so far  
 “ from approving what was done on the 30th  
 “ of April to the King’s Bust, that I detested  
 “ the action, and would freely contribute my  
 “ share of the reward offered by the merchants  
 “ to find out the authors of it.” Mr. Frazer  
 then desired me to call again in the afternoon; which I accordingly did, and waited there about an hour and a half without being admitted to see him. At last, having some business at home which I wanted to do, and thinking I might go about it, I resolved to go home for a short time, and told the bailiff in writing that I would be back again presently.

I had gone but a few steps from Mr. Frazer’s door when I met Mr. Marteilhe, who was going thither. He asked me where I was going? and at the same time two bailiffs called out to me to come back immediately. I accordingly returned, and was shewn into a room, where Mr. Rouville, Mr. Frazer and Mr. Marteilhe were assembled; who, after telling me that I had behaved very ill, read the warrant of commitment, of which the publick has seen copies (the charge in which is very false) and told me I was a prisoner. I said, “ that it  
 “ was

“ was very hard that I should be sent to jail  
 “ for differing in opinion from another man ;  
 “ that it would greatly injure my little affairs ;  
 “ that I had no clerk, and nobody but my  
 “ sister to take care of my house and business ;  
 “ and that she was defenceless, and liable to  
 “ be imposed upon : And I concluded with  
 “ offering to find bail to any amount.” This  
 offer they peremptorily refused, and gave me  
 in charge to two bailiffs, and a file of soldiers,  
 who conducted me here (to the publick prison  
 of Montreal) about four o'clock, like the  
 most ignominious offender. I begged the Judges  
 to send off the soldiers, and not make me a  
 spectacle to the world, and I gave my word  
 that I would go quietly to jail with the bailiffs :  
 But this request they likewise thought fit to  
 refuse. When I was got to the prison, I wrote  
 a few notes to some of the gentlemen of my ac-  
 quaintance in the town (of Montreal) to acquaint  
 them with what had befallen me ; whereupon  
 they went to the Judges, and offered bail for  
 me to the amount of some thousands of pounds :  
 But it was again refused.

Messieurs Rouville, Marteilhe and Fraser  
 would not take my deposition concerning this  
 affair, though I applied to them before Mr. de  
 Bellestre : Yet they afterwards took his depo-  
 sition, and committed me to prison in conse-  
 quence of it.

This



This is a true state of the affair; and, as such, I submit it to the perusal of the impartial publick.

DAVID SALISBURY FRANKS.

From Montreal Jail, May 4, 1775.

P. S. Since I wrote the above, his Excellency Governour Carleton has ordered me to be set at Liberty, without paying the jail fees, by an Express from Quebeck to Captain Frazer. This was done on Tuesday the 9th of May, at half an hour after four o'clock in the afternoon.

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The only kind of judicial authority that seems to have been established in the province of Quebeck from the first day of May, 1775, (when, by the above-mentioned clause in the Quebeck-act, all the courts of justice and commissions in the province were abolished, without an establishment of any others in their room,) to the ninth of the following month of June, was that of the aforesaid conservators of the peace. On the said ninth of June Governour Carleton issued the following proclamation for establishing martial law throughout the province.

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By

By His Excellency GUY CARLETON,  
 Captain-general and Governour in  
 Chief, in and over the province of  
 Quebeck, and the territories depend-  
 ing thereon in America, Vice-admi-  
 ral of the same, and Major-general  
 of his Majesty's forces, commanding  
 the Northern district, &c. &c. &c.

#### A P R O C L A M A T I O N .

“ **W**HEREAS a rebellion prevails in many  
 “ of his Majesty's colonies in America,  
 “ and particularly in some of the neighbouring  
 “ ones; and whereas many of the aforesaid  
 “ rebels have with an armed force made in-  
 “ cursions of late into this province, attacking  
 “ and carrying away from thence a party of  
 “ his Majesty's troops, together with a parcel  
 “ of stores and a vessel belonging to his Ma-  
 “ jesty, and are at present actually invading  
 “ this province with arms in a traitorous and  
 “ hostile manner, to the great terror of his  
 “ Majesty's subjects, and in open defiance of  
 “ his laws and government, falsely and ma-  
 “ liciously giving out, by themselves and their  
 “ abettors, that the motives for so doing are  
 “ to prevent the inhabitants of this province  
 “ from

“ from being taxed and oppressed by govern-  
 “ ment, together with divers other false and  
 “ seditious reports, tending to enflame the  
 “ minds of the people and alienate them from  
 “ his Majesty: To the end therefore that so  
 “ treasonable an invasion may be soon defeated,  
 “ that all such traitors with their said abettors  
 “ may be speedily brought to justice, and the  
 “ publick peace and tranquillity of this province  
 “ again restored, which the ordinary course of  
 “ the civil law is at present unable to effect,  
 “ I have thought fit to issue this proclamation,  
 “ hereby declaring that, until the aforesaid good  
 “ purpose can be attained, I shall, in virtue of  
 “ the powers and authority to me given by his  
 “ Majesty, execute Martial Law, and cause  
 “ the same to be executed throughout this  
 “ province: and to that end I shall order the  
 “ militia within the same to be forthwith raised.  
 “ But, as a sufficient number of commissions to  
 “ the several officers thereof cannot be imme-  
 “ diately made out, I shall in the mean time  
 “ direct all those having any militia commissions  
 “ from the Hon. Thomas Gage, the Hon.  
 “ James Murray, Ralph Burton, and Frederick  
 “ Haldimand, Esquires, heretofore his Majesty's  
 “ governours in this province, or either of them,  
 “ to obey the same, and execute the powers  
 “ therein mentioned, until they shall receive  
 “ orders from me to the contrary; and I do  
 “ accordingly in his Majesty's name hereby  
 “ require and command all his subjects in this  
 “ pro-

“ province, and others whom it may concern,  
 “ on pain of disobedience, to be aiding and  
 “ assisting to such commissioned officers, and  
 “ others who are or may be commissioned by  
 “ me, in the execution of their said com-  
 “ missions for his Majesty’s service.

“ Given under my hand and seal of arms at  
 “ Montreal, this ninth day of June, one  
 “ thousand seven hundred and seventy-  
 “ five, in the fifteenth year of the reign  
 “ of our Sovereign Lord GEORGE the  
 “ Third, by the Grace of GOD, of  
 “ Great-Britain, France, and Ireland,  
 “ King, defender of the faith, and so  
 “ forth.

GUY CARLETON.

By his Excellency’s command,  
 H. T. CRAMAHE.

GOD save the KING.”

It must be observed that at the time of issuing this proclamation, and through all the remaining part of the last summer, down to the beginning of November, when the provincial army under General Montgomery took fort Saint John’s, the towns of Quebeck and Montreal, (which are the places in which the courts of justice in that province had usually sat to administer justice,) were in the peaceable possession of his Majesty’s officers of government ; so that justice

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justice might have been administered in them, and offenders of every kind brought to condign punishment, according to the laws of the province established by the late act of parliament, as easily and regularly as if no disturbances had prevailed in the adjoining provinces; and consequently there seemed to be no pretence for establishing Martial Law there. For, if that law can ever be legally established under the English government, (which seems doubtful) it is only when there is an invasion or rebellion in the kingdom, or province, in which it is to be established, that has risen to such a height as to make it impossible for the king's judges to sit in the ordinary courts, and administer justice according to the laws of the land. This will appear more plainly from the following reflections upon Martial Law, which were published in the form of a letter to the printer of the Public Advertiser in the month of September, 1775, soon after the receipt of the astonishing news that Martial Law had been established in the province of Quebeck.

N. B. It may further be observed, that the foregoing proclamation (in case it had been legal to issue it at all) ought to have been published under the public seal of the province, of which the governour (by a clause in his commission of governour) is the keeper. The inhabitants of the province are not bound to take notice of proclamations under the governour's private seal of arms. The king's proclamations in Great-Britain are always under the great seal of Great-Britain.

Reflections

## Reflections on MARTIAL LAW.

In a Letter to the Printer of the Public Advertiser, published on the 6th, the 8th, and the 11th days of September, 1775.

MR. PRINTER,

Aug. 30, 1775.

UPON the arrival of the late proclamations made by General Gage at Boston, and General Carleton at Quebeck, for establishing martial law in their respective provinces, I have observed many people express a good deal of surprize at hearing of so extraordinary a species of law, that seems by its name to differ so essentially from all the known branches of law that are allowed in the British dominions. It seems, say they, to be neither common law, nor statute law, nor civil law: What law then is it? and in what cases can it be established? and by what authority? Can the King establish it by his single authority without the concurrence of parliament? and if he can, can he do it in all cases, or only in certain cases marked out by the law? and if only in certain cases, what are those cases? and if the King can establish it in England in certain proper cases, without the concurrence of parliament, can his governours of his American provinces do the same in their respective governments without the concurrence  
of

of the councils and assemblies of those provinces, or, at least, of the councils only ?

These, Mr. Printer, seem to be reasonable questions, and have excited in me the same desire of knowing the proper answers to them, as I have observed the generality of people, who reflect at all upon publick measures, to be possessed with : and, in order to satisfy my curiosity upon this head, I have looked a little into our books of law and history to see what they say about it. Now the result of what I have met with in them upon this subject is as follows :

In the first place it seems clear that martial law, when it is established, relates only to the army and navy, and the persons who join with the soldiers, and follow the camp : for, in the year 1626, the second year of the reign of King Charles I. when that king had injudiciously entered into a war with the crown of Spain, and some of the troops, which he had employed in that war in an unsuccessful expedition against Cadiz, had returned to England, it appears by Rushworth's Collections, vol. 1. page 419, " that the companies of soldiers [who had so  
" returned from Cadiz] were scattered here and  
" there in the bowels of the kingdom, and  
" governed by martial law. The King gave  
" commissions to the lords lieutenants and their  
" deputies, in case of felonies, robberies, mur-  
" ders,

“ ders, outrages, or misdemeanours, committed  
 “ by mariners, soldiers, or other disorderly  
 “ persons joining with them, to proceed, ac-  
 “ cording to certain instructions, to the trial,  
 “ judgement, and execution of such offenders  
 “ as in time of war. And some were executed  
 “ by those commissions.”

This measure of granting commissions to  
 execute martial law, though it was confined to  
 the punishment of offences committed by ma-  
 riners, soldiers, and disorderly persons joining  
 with them, was afterwards expressly condemned  
 as *illegal* by the famous act of parliament, com-  
 monly called *the Petition of Right*, in the year  
 1628, notwithstanding the King had been at  
 war with Spain at the time of issuing these  
 commissions; because, as there was no enemy  
 in the kingdom, the ordinary course of justice  
 was not interrupted, but the courts of justice  
 sat as freely to administer justice as they had  
 used to do before the war against Spain had been  
 declared; and consequently it was possible to  
 try and punish those mariners, soldiers and  
 others, for the said felonies, robberies and mur-  
 ders, and other offences, according to the  
 known laws and statutes of the realm, without  
 having recourse to a more summary and arbi-  
 trary mode of trial. The clause of the petition  
 of right relating to this subject is as follows:

“ And



“ And whereas of late great companies of  
 “ soldiers and mariners have been dispersed into  
 “ divers counties of the realm, and the inhabi-  
 “ tants, against their wills, have been compelled  
 “ to receive them into their houses, and there  
 “ to suffer them to sojourn, against the laws  
 “ and customs of this realm, and to the great  
 “ grievance and vexation of the people:

“ And whereas also by authority of parlia-  
 “ ment, in the 25th year of the reign of King  
 “ Edward the Third, it is declared and enacted,  
 “ That no man shall be fore-judged of life or  
 “ limb against the form of the great charter and  
 “ the law of the land: and by the said great  
 “ charter and other the laws and statutes of this  
 “ your realm, no man ought to be adjudged to  
 “ death but by the laws established in this your  
 “ realm, either by the customs of the same  
 “ realm or by acts of parliament: And whereas  
 “ no offender of what kind soever is exempted  
 “ from the proceedings to be used, and punish-  
 “ ments to be inflicted, by the laws and statutes  
 “ of this your realm:

“ Nevertheless, of late, divers commissions  
 “ under your Majesty's great seal have issued  
 “ forth, by which certain persons have been  
 “ assigned and appointed commissioners, with  
 “ power and authority to proceed within the  
 “ land according to the justice of martial law  
 “ against such soldiers and mariners, or other

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“ dissolute

“ dissolute persons joining with them, as should  
 “ commit any murder, robbery, felony, mu-  
 “ tiny, or other outrage or misdemeanor what-  
 “ soever; and by such summary course and  
 “ order as is agreeable to martial law, and is  
 “ used in armies in time of war, to proceed to  
 “ the trial and condemnation of such offenders,  
 “ and them to cause to be executed and put to  
 “ death according to the law martial :

“ By pretext whereof some of your Majesty’s  
 “ subjects have been by some of the said com-  
 “ missioners put to death, when and where,  
 “ if by the laws and statutes of the land they  
 “ had deserved death, by the same laws and  
 “ statutes also they might, and by no other  
 “ ought to have been adjudged and executed :

“ And also sundry grievous offenders, by  
 “ colour thereof claiming an exemption, have  
 “ escaped the punishment due to them by the  
 “ laws and statutes of this your realm, by rea-  
 “ son that divers of your officers and ministers  
 “ of justice have unjustly refused, or forbore,  
 “ to proceed against such offenders according  
 “ to the same laws and statutes, upon pretence  
 “ that the said offenders were punishable only  
 “ by martial law, and by authority of such  
 “ commissions as are aforesaid; which com-  
 “ missions, and all others of like nature, are  
 “ wholly and directly contrary to the said laws  
 “ and statutes of this your realm :

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“ They do therefore humbly pray your most  
 “ Excellent Majesty,

“ That your Majesty will be pleased to re-  
 “ move the said soldiers and mariners, and that  
 “ your people may not be so burthened in time  
 “ to come; and that the foresaid commissions  
 “ for proceeding by martial law may be revoked  
 “ and annulled; and that hereafter no com-  
 “ missions of like nature may issue forth to any  
 “ person or persons whatsoever, to be executed  
 “ as aforesaid, lest by colour of them any of  
 “ your Majesty’s subjects be destroyed or put to  
 “ death, contrary to the laws and franchises of  
 “ the land.”

These are the words of this most excellent statute,  
 which is said to have been penned by the famous  
 Sir Edward Coke, and is without all comparison,  
 the most important and beneficial statute to public  
 liberty of all the laws now in being, and there-  
 fore ought to be most diligently read and studied,  
 and constantly kept in remembrance, by every  
 lover of the English constitution. And by  
 these words it is clear beyond a doubt, that  
 commissions to execute martial law, (even with  
 respect to mariners, soldiers, and other disso-  
 lute persons who join with them) are illegal  
 in time of war, as well as in time of peace,  
 unless the war be at home in the heart of the  
 kingdom, and the success and power of the  
 enemy be so great, that the courts of justice  
 cannot sit to administer justice upon the offend-

ing soldiers and mariners according to the known laws and statutes of the realm: nor is it clear that this case is excepted from the general prohibition of the exercise of martial law contained in this noble statute. But, as the main ground of this prohibition (which is the practicability of trying and punishing such offenders according to the known laws and statutes of the realm) does not extend to that case, it seems reasonable to suppose that the prohibition itself was not meant to extend to it. But in all cases short of that case of general confusion and extreme necessity, it is clear that the exercise of martial law is illegal.

That it was only in this extraordinary case of general confusion, and an impossibility of proceeding by the usual methods of the law in the King's courts of justice, that martial law could legally be exercised, (even before the passing of the petition of right) was admitted by Serjeant Ashley himself, the King's serjeant, in the debates upon that petition, in a famous speech at a conference between the two houses of parliament, in which he endeavoured to justify the late imprisonments by the special order of the King in council, without assigning a cause, and advanced that dangerous doctrine, of the existence of a species of law which he called the *Law of the State*, or state necessity, that proceeded not by the law of the land, but according to natural equity; a doctrine that appeared

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so very mischievous and unconstitutional to the House of Lords, that, upon the motion of the Earl of Warwick, he was ordered into custody for advancing it. Yet in this very speech he speaks thus concerning martial law :

“ The martial law likewise, (though not  
 “ to be exercised in times of peace, when  
 “ recourse may be had to the King’s courts)  
 “ yet in time of invasion, or other times of  
 “ hostility, when an army royal is in the field,  
 “ and offences are committed which require  
 “ speedy resolution, and cannot expect the so-  
 “ lemnities of legal trials, then such imprison-  
 “ ment, execution, or other justice done by  
 “ the law martial, is warrantable, and is *jus*  
 “ *gentium*, which ever serves for a supply in  
 “ defect of the common law, when ordinary  
 “ proceedings cannot be had.” See the Par-  
 liamentary History, vol. viii. p. 47.

This seems to be a rational account of the cases in which the exercise of martial law was legal, by a person who certainly was not disposed to curtail the prerogative of the crown upon that subject, any more than upon the power of imprisoning men without assigning a cause. We may therefore safely conclude, that if the exercise of martial law is ever legal, (which may perhaps be doubted since the above-mentioned strong and general prohibition of it by the petition  
 of

of right) it is only in that case of extreme necessity, described by Serjeant Ashley, when recourse cannot be had to the King's courts.

It is also evident from these authorities, that the Martial Law, in the cases in which it may legally be exercised, relates only to *mariners and soldiers, and those persons who join themselves to them*, and not to the inhabitants of the kingdom at large, who are quiet at their homes, and have no connection with the army. It is, in short, a summary kind of criminal law adapted to the government of an army.

Nor does it seem, according to these authorities, to include in it any right of *levying* an army, or *pressing* men into the service, but only of governing it, *when levied*, by a speedy and discretionary punishment of the crimes, which the soldiers, who shall engage in it, may commit.

In that case of a general confusion occasioned by the invasion of the kingdom by an enemy, and a consequent impossibility to have recourse to the King's ordinary courts of Justice, for the punishment of offences committed by the soldiers, in which alone the exercise of martial law is legal, I conceive it may be established by the King alone, without the concurrence of his Parliament. But in England, the exercise of this prerogative of the crown  
is

is rendered totally unnecessary by the annual renewal of the Mutiny Act, which prescribes and establishes a particular Code of military regulations for the good government of the army, by the joint authority of King and Parliament, and thereby takes away all pretence or occasion for establishing any other species of martial law.

The illegality of establishing martial law, for the government of the army in time of peace, any otherwise than by Act of Parliament, is recognized and recited in the preamble to the annual Mutiny-Acts, which runs in these words :

“ Whereas the raising, or keeping, a standing  
 “ army within this kingdom in time of peace,  
 “ unless it be with consent of parliament, is  
 “ against law :

“ And whereas it is judged necessary by his  
 “ Majesty and this present parliament that a  
 “ body of forces should be continued for the  
 “ safety of this kingdom, the defence of the  
 “ possessions of the crown of Great-Britain,  
 “ and the preservation of the balance of power  
 “ in Europe ; and that the whole number of  
 “ such forces should consist of twenty-one  
 “ thousand, nine hundred, and thirty, effective  
 “ men, invalids included :

“ And

“ And whereas no man can be fore-  
 “ judged of life or limb, or subjected, in  
 “ time of peace, to any kind of punish-  
 “ ment within the realm, by martial law, or  
 “ in any other manner than by the judgement  
 “ of his peers, and according to the known  
 “ and established laws of this realm; yet,  
 “ nevertheless, it being requisite for the re-  
 “ taining all the before-mentioned forces in  
 “ their duty, that an exact discipline be ob-  
 “ served, and that soldiers who shall mutiny,  
 “ or stir up sedition, or shall desert his Ma-  
 “ jesty’s service, within this realm, or the king-  
 “ dom of Ireland, Jersey, Guernsey, Alder-  
 “ ney, and Sark, or the Islands thereunto be-  
 “ longing, be brought to a more exemplary  
 “ and speedy punishment than the usual forms  
 “ of the law will allow. Be it therefore  
 “ enacted, &c.”

These, Mr. Printer, are the most material  
 observations I have been able to collect con-  
 cerning the establishment of martial law with-  
 in the Realm of Great Britain. As to the  
 Governours of the colonies, they cannot, I pre-  
 sume, have a greater power in this respect in  
 their several governments than the King, their  
 Master, whose person they represent, has here  
 within the Realm. But, I conceive, they may  
 have the same power, if the King, by his com-  
 mission, under the great seal, of Captain Ge-  
 neral and Governour in chief, thinks proper to

give

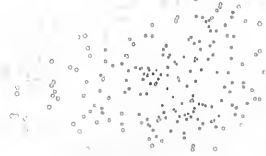
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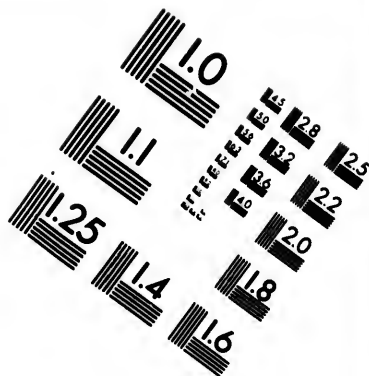
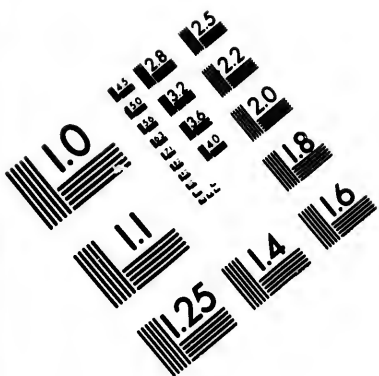


give it to them; unless where it may happen that the king's power of making such a delegation of his authority has been limited by the terms of a provincial charter; in which case every thing in the king's commission, that is contrary to the charter, will be void. But otherwise, I apprehend, that an American Governour has just so much of his Majesty's authority, with respect of the establishment of martial law in his province, as his Majesty has thought proper to assign to him by his commission as Governour: and therefore to know, how much that is in the case of any particular Governour, recourse must be had to his commission. Now, the commission of the Captain-General and Governour in chief of the province of the Massachusetts Bay is not any where published, that I know of: at least it is not to be found in governour Hutchinson's History of that province: But I presume it does not differ much from that of the governour of the neighbouring province of New-York; of which we find a copy in Mr. Smith's History of that province. Now in that commission of governour of New-York there is the following clause, to empower the governour to levy troops, and employ them against enemies, pirates, and rebels, and also to execute martial law. " And we do hereby  
 " give and grant unto you, the said Danvers  
 " Osborne; by yourself, or by your captains  
 " and commanders by you to be authorized,  
 " full power and authority to levy, arm, muster,

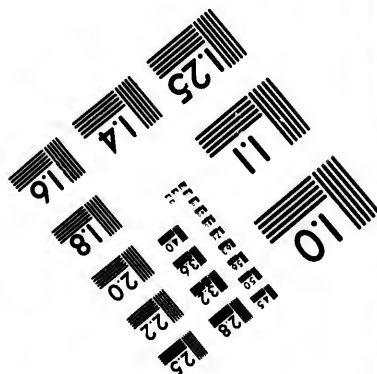
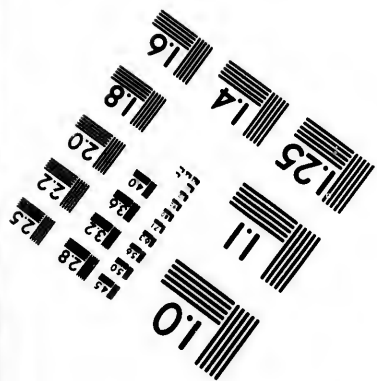
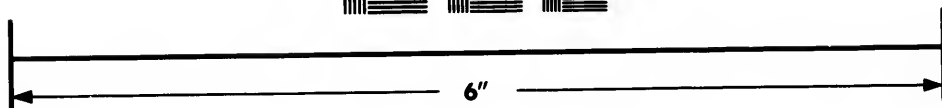
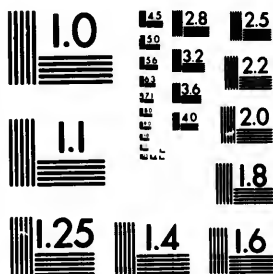
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**IMAGE EVALUATION  
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“ command, and employ, all persons whatso-  
 “ ever residing within our said province of  
 “ New-York, and other the territories under  
 “ your government; and, as occasion shall  
 “ serve, to march them from one place to an-  
 “ other, or to embark them, for the resisting  
 “ and withstanding of all enemies, pirates, and  
 “ rebels, both at sea and land; and to trans-  
 “ port such forces to any of our plantations in  
 “ America, if necessity shall require, for the  
 “ defence of the same against the invasions or  
 “ attempts of any of our enemies: and such  
 “ enemies, pirates, and rebels, if there shall be  
 “ occasion, to pursue and prosecute in or out  
 “ of the limits of our said province and plan-  
 “ tations, or any of them; and, if it shall so  
 “ please God, them to vanquish, apprehend, and  
 “ being taken, either according to law to put  
 “ to death, or keep and preserve alive, at your  
 “ discretion: and to execute martial law in  
 “ time of invasion, or other times, when by  
 “ law it may be executed: and to do and exe-  
 “ cute all and every thing and things which  
 “ to our Captain-General and Governour in  
 “ chief doth, or ought of right to belong.”

Now this clause suggests the following ob-  
 servations. In the first place, by *the power to  
 levy, arm, and muster troops*, we are not to  
 understand a power *to press* men for soldiers  
 against their will; because that is a power  
 which the King has not himself in England,  
 and

and therefore cannot delegate to his Governours in America: And if he were to insert a clause in his commissions for the exprefs purpose of delegating it, the clause would be illegal, and consequently void. This power to levy, arm, and muster troops must, therefore, mean only a power to raise volunteers for the king's service, and to arm and muster them. In the second place, it must be observed, that if any of the enemies, pirates, or rebels, shall be vanquished and taken prisoners, they are either to be kept alive, or to be put to death, at the governour's discretion; but if they are put to death, it is directed to be *according to law*; by which, I presume, is meant, that if they are foreign enemies, they are to be put to death according to *the law of nations*, which is the law that relates to foreign enemies; and if they are pirates, they are to be put to death according to *the laws of the Admiralty*, or the *Maritime law*, which is the law that relates to Sea-offenders; and if they are rebels, they are to be put to death according to the laws of the land against high-treason, and to be tried by a Jury, with the usual allowance of challenges, and other advantages, in the manner prescribed by those laws; but in neither case to be put to death in a hasty and summary manner, without a regular trial, and by the mere order of the governour, under colour of martial law: because that would be contrary to this direction to the governour to put them to death, (if he

shall think fit to put them to death) *according to law*. For martial law, as we have seen above, relates only to the soldiers of the army, and the persons who join themselves to them. In the third place, it must be observed, that that part of the foregoing clause which conveys to the Governour of New-York a power to execute martial law, and which is contained in these very few words: "And to execute martial law in time of invasion, or other times when by law it may be executed," seems intended to enable the Governour to command and govern, in a manner suitable to military discipline, the army of volunteers, whom he shall raise, at any time of invasion and rebellion in his province, to oppose the enemies, or subdue the rebels; which army of volunteers are not, like the regular army, made subject to military discipline by the annual Mutiny Acts, and, therefore, without the establishment of martial law amongst them, might become disorderly and useles, and a burden, instead of a safe-guard, to the province.

This, Mr. Printer, I take to be the true meaning of the foregoing clause in the Governour of New-York's commission, by which he is empowered to levy, arm, and muster troops, and execute martial law in his province. And the like clauses I believe to be contained in the commissions of the Governours of Massachusetts Bay and Quebeck. This leads us to the consideration

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deration of the proclamations of those two Governours for establishing martial law in their respective provinces.

Now it seems to me, Mr. Printer, that the proclamation of martial law by Governour Gage in the province of Massachusetts Bay, is indeed legal, because that province is in a state of absolute rebellion, and the King's Courts of Justice have long been unable to administer Justice in it according to the laws of the province, at least ever since the arrival of the Act of Parliament for altering their charter. But it does not appear to me that this establishment of martial law can be of much advantage to his Majesty's service in that province. For, as to the government of the regular forces at Boston, that was already better provided for by the Mutiny Act; and I do not hear that Governour Gage has been able to raise any regiments of volunteers amongst the inhabitants of that province, for the government of whom the establishment of martial law might become expedient: For it must always be remembered, that martial law relates only to the government of an army, and not to the inhabitants of the province at large, who live peaceably at their respective dwellings. At least so it now appears to me in consequence of this inquiry into the subject, and the authorities concerning it, which I have cited here above; though I confess, that, before I made  
this



this inquiry, I had (as many others seem to have done, and amongst them, perhaps, Governour Gage and Governour Carleton) conceived martial law to have had a more extensive operation, and to have been a summary and discretionary method of governing all the inhabitants of the kingdom, or of the province in which it was established, and of determining all contests and complaints in it, those of a civil as well as those of a criminal nature, which was allowed to take place in cases of extreme necessity, when a foreign or a rebel army was raging in the heart of the country, and the ordinary Courts of Justice had it not in their power to administer Justice. But I now see that I was mistaken, and that this law in no case extends to any persons but the soldiers of the army, and the persons who join themselves to them, Upon the whole, therefore, it seems to me, that the establishment of martial law in the province of the Massachusetts Bay, is (though a legal) an unnecessary measure, and cannot be of advantage to his Majesty's service. However, in this I shall be glad to find myself mistaken: and I heartily wish that the brave and loyal Brigadier General Ruggles may soon be able to raise a body of provincial troops there, to join his Majesty's forces in subduing the rebel army, and reducing the province once more to the obedience of the Crown; in which case the exercise of martial law will undoubtedly

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be proper and useful for the good government of such provincial troops, because the Mutiny-Act does not extend to them.

But, as to the proclamation for establishing Martial Law in the province of Quebec, I can hardly conceive it to be legal in the state in which the province was reported to be when it was published, that is, on the 9th of June last: For, according to all the accounts we have had from thence, that province was then, and, I hope is still, in a state of perfect tranquillity. It is true that the rebel Americans had, by Order of the Continental Congress, or some of its principal Members, seized upon the Forts of Ticonderoga and Crown-Point. But these places are not in the province of Quebec, even according to the late prodigious enlargement of the boundaries by the Quebec Act. Nor is there any reason to apprehend, that the provincial troops, who are now in possession of those places, will make Incursions from thence against the Canadians, unless the Canadians should be persuaded to take part in the present unfortunate dispute, and invade the back-settlements of the revolted English provinces; in which case it is indeed most certain, that the provincials at Crown-Point would very soon invade, and probably over-run, and lay waste, and ruin the whole province of Quebec. But, if the Canadians continue neutral (as it is evidently for their own interest,

and

and probably best for the King's service upon the whole, that they should do) it is next to certain that the Americans will not invade their province, but will be very well contented to get rid of so formidable, or, at least, so troublesome an enemy as they would be, at so cheap a rate as that of leaving them at peace in their own province. And this they have all along declared. So that Canada both was, and was likely to continue, in a state of perfect tranquillity on the 9th of June last, when the proclamation for establishing Martial Law was published there, unless the Canadians should be prevailed upon to become aggressors against the other colonies.

I know it will here be observed by some persons, that the Americans at Crown-Point actually did make an incursion into Canada, and took a small sloop, belonging to his Majesty, and some battoes upon Lake Champlain, and that some of them did appear at St. John's, a place near that Lake, that is within the province of Quebeck. This is true. But it is also true that they considered the taking of the sloop and battoes as a measure necessary to their own security at Crown-Point and Ticonderoga, as those vessels might otherwise have been used by his Majesty's troops in Canada, or by other persons ill-disposed towards them; for the purpose of molesting them in their possession of Crown-Point: So that it was no  
proof

proof of their intention to invade Canada. And, as to the party that appeared at St. John's, in the province of Quebeck, their proceedings were a proof that they did not intend to invade Canada, or molest any of its inhabitants: For when a Mr. Bindon, an English merchant at Montreal, fell into their hands at St. John's (whither he went, by the permission of a Field-Officer, of the 26th regiment, to look after some goods which he had sent there, in order to be carried over Lake Champlain to Major Skeene's settlement, called Skeene's-Borough, near that Lake,) they treated him well, kept him all night, and then sent him back with a letter, writ by one *Allen*, to the people of Montreal, in which he assured them that the provincials had not the least intention of committing hostilities, or any way molesting the Canadians or the Indians; that their business was only to procure stores, provisions, and some ammunition, to the amount of 500l. which they would pay for. This you may depend upon, Mr. Printer, for truth. And this does not shew any intention in the provincials of invading Canada, or acting offensively against the Canadians.\* And further,

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\* N. B. It is true that since the publication of this letter the provincials have invaded and conquered the whole province of Quebeck, excepting only the town of Quebeck. It is probable they were induced to do this, partly, by the disposition which the bulk of the Canadians between the rivers

Richlieu

this small party of provincials, such as it was, (hostile or otherwise, as you may please to consider them,) retreated the next day from St. John's, upon hearing of the march of a body of troops against them, and went out of the province back to Crown-Point. So that upon the whole it seems clear, that the whole policy of the rebel provincials in taking Crown-Point and Ticonderoga is to keep the Canadians in awe, and prevent them from acting against the other Americans, and not to invade the province of Quebeck, or act offensively against any of its inhabitants. This being the case, and this small party of provincials, that had appeared at St. John's, having retreated out of the province the next day, what pretence was there for establishing martial law in the province? Where was the invasion, where the internal and violent disturbance of the province

Richlieu and St. Lawrence shewed to favour them, which made them believe such an enterprize could not fail of success, and partly by the apprehension that in the course of this unhappy contention, and when more troops should be sent into the province, others of the Canadians might be prevailed on to enlist in the new regiment which, (as we have seen by the letter of the *Canadien Patriote*,) the Governour was desirous of raising amongst them, and, when so enlisted, might be made to march out of their own province and attack the back settlements of New-England or the other united provinces. The apprehension that this use would be made of the Canadians was probably the chief motive that induced the provincials to invade and conquer Canada, in order to be beforehand with the Governour in that attempt.

that,

that, according to Serjeant Ashley's expression, made it impossible to have recourse to the King's Courts for the punishment of offences, and which alone could make it legal to establish Martial Law? I profess I can see nothing in the state of the province to warrant such a measure. Nor indeed, if it had been legal at that time to establish Martial Law in the province, can I see any good end that it would have answered; seeing that Martial Law has nothing to do with the levying of troops, but only with the government of them, when levied; and that, at the time of this proclamation for Martial Law, Governour Carleton had not levied any new troops amongst the Canadians to be the objects of this law. If indeed the establishment of Martial Law in the province would have enabled his Excellency to press the Canadians into the service (into which they appeared so little likely to enter as volunteers) there would have been a motive to induce his Excellency to publish this Proclamation for establishing Martial Law. And it is not impossible that a belief, that the establishment of Martial Law would have this effect, may have influenced him to establish it. But in this, if this was his belief, (which I by no means presume to affirm) I conceive for the reasons above-mentioned, that his Excellency has been mistaken, and that the establishment of Martial Law in the province, even if the situation of the province had been such as to

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make such a measure legal, would not have authorised him in the least degree to press the Canadians into the service on this occasion against their will, but only to govern in a military manner by that summary species of law, such of them as should, freely and of their own accords, have engaged in it, during such time as they should have lawfully continued to be embodied, and have acted as an army. But, in the state of peace and quiet in which the province appears to have been on the 9th of last June, I think it is plain that the establishment of martial law was illegal, and consequently, that every act that shall be done in pursuance of it, and that would not otherwise have been warranted by the laws of the province, may, on some future occasion, be made the ground of an indictment for murder or battery, or of an action of trespass, or action on the case against the doers of them, in which the plaintiffs will be entitled to recover a pecuniary compensation for the damages they shall have been made to suffer by means of such unwarrantable proceedings. And if this be the case (as I think can hardly be doubted, after the perusal of the authorities above cited, and particularly that *most venerable of Laws*, the Petition of right) it seems to follow, that the wisest thing the governour of that province can do, after having imitated, by an unhappy mistake, the conduct of king Charles the First,

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in establishing martial law at a time when it could not legally be established, will be to imitate that monarch in the subsequent part of his conduct, when he gave his consent to the Petition of right, and cancelled his commissions for executing martial law, by publishing another proclamation in the province to revoke and annul the former, by which martial law was declared to be established, *left by colour thereof* (as the Petition of right expresses it) *any of his Majesty's subjects, in the said province of Quebeck, be destroyed or put to death, contrary to the law, and franchises of the land.*

I am, SIR,

Your very humble Servant,

*A FRIEND to the PETITION of RIGHT.*

Additions



## Additions to the foregoing Reflections on Martial Law.

**T**HE inquisitive reader of the foregoing Reflections will probably be glad to know what the charter of the Massachusetts Bay and the new commission of Captain-General and Governour in chief of the province of Quebeck, granted to General Carleton since the passing of the Quebeck Act, declare concerning the establishment of martial law. I shall therefore proceed to insert the clauses of king William's charter to the Massachusetts Bay, and of the said new commission to the governour of Quebeck, which relate to that subject.

*The clause relating to martial law, in the charter granted by king William and queen Mary to the inhabitants of the province of Massachusetts bay, in the year 1692.*

“ And we do, by these presents, for us,  
 “ our heirs and successors, grant, establish,  
 “ and ordain, that the governour of our said  
 “ province, or territory, for the time being,  
 “ shall have full power, by himself, or by  
 “ any chief commander, or other officer or  
 “ officers, to be appointed by him, from time  
 “ to time, to train, instruct, exercise, and go-  
 “ vern

“ vern the militia there ;— and for the special  
 “ defence and safety of our said province or  
 “ territory, to assemble in martial array, and  
 “ put in warlike posture, the inhabitants of  
 “ our said province or territory, and to lead  
 “ and conduct them,— and with them to en-  
 “ counter, expulse, repel, resist, and pursue  
 “ by force of arms, as well by sea as by  
 “ land, within or without the limits of our  
 “ said province or territory ; and also, to kill,  
 “ slay, destroy, and conquer, by all fitting  
 “ ways, enterprizes, and means whatsoever,  
 “ all and every such person and persons as shall,  
 “ at any time hereafter, attempt or enterprize  
 “ the destruction, invasion, detriment or an-  
 “ noyance of our said province or territory ;—  
 “ and to use and exercise the law martial in  
 “ time of actual war, invasion, or rebellion,  
 “ as occasion shall necessarily require ;— and  
 “ also, from time to time, to erect forts, and  
 “ to fortify any place or places within our said  
 “ province or territory, and the same to fur-  
 “ nish with all necessary ammunition, provi-  
 “ sion, and stores of war, for offence or de-  
 “ fence ; and to commit, from time to time,  
 “ the custody and government of the same, to  
 “ such person or persons as to him shall seem  
 “ meet ;— and the said forts and fortifications to  
 “ demolish at his pleasure ; — and to take and  
 “ surprize, by all ways and means whatsoever,  
 “ all and every such person or persons, with  
 “ their ships, arms, ammunition, and other  
 “ goods,

“ goods, as shall in a hostile manner invade,  
 “ or attempt the invading, conquering, or  
 “ annoying of our said province or territory.  
 “ Provided always, and we do, by these pre-  
 “ sents, for us, our heirs and successors, grant,  
 “ establish, and ordain, That the said gover-  
 “ nour shall not, at any time hereafter, by vir-  
 “ tue of any power hereby granted, or here-  
 “ after to be granted to him, transport any of  
 “ the inhabitants of our said province or terri-  
 “ tory, or oblige them to march, out of the  
 “ limits of the same, without their free and  
 “ voluntary consent, or the consent of the Great  
 “ and General Court, or Assembly, of our said  
 “ province or territory ; nor grant commissions  
 “ for exercising the law martial upon any the  
 “ inhabitants of our said province or territory,  
 “ without the advice and consent of the Coun-  
 “ cil, or Assistants, of the same.”

N. B. No alteration is made in this part of  
 the charter of the Massachusetts bay by the  
 late act of 14 Geo. 3.

*The clause in the new commission of the Gover-  
 nour of the province of Quebeck, relating to  
 martial law.*

“ And we do hereby give and grant unto  
 “ you, the said Guy Carleton, by yourself, or  
 “ by your captains and commanders by you  
 “ to be authorized, full power and authority  
 “ to

“ to levy, arm, muster, command, and em-  
 “ ploy all persons whatsoever residing within  
 “ our said province ; — and, as occasion shall  
 “ serve, them to march, embark, or transport  
 “ from one place to another, for the resisting  
 “ and withstanding of all enemies, pirates,  
 “ and rebels both at land and sea ; — and to  
 “ transport such forces to any of our planta-  
 “ tions in America, if necessity shall require,  
 “ for defence of the same against the invasion  
 “ or attempts of any of our enemies ; — and such  
 “ enemies, pirates and rebels, if there shall be  
 “ occasion, to pursue and prosecute in, or out  
 “ of, the limits of our said province ; and, if  
 “ it shall so please God, them to vanquish, ap-  
 “ prehend, and take, and, being taken, ac-  
 “ cording to law to put to death, or keep or  
 “ preserve alive, at your discretion ; — and to exe-  
 “ cute martial law in time of invasion, war,  
 “ or other times, when by law it may be exe-  
 “ cuted ; — and to do and execute all and every  
 “ other thing and things, which to our cap-  
 “ tain-general and governour in chief doth or  
 “ of right ought to belong.”

N. B. This clause is word for word the same  
 with that in the former commission, contrary  
 to what has been asserted in some of the publick  
 news-papers. The differences between the  
 two commissions are these that follow, which  
 are grounded for the most part on the late

act of parliament, for regulating the government of that province.

*Differences between the old and new commissions of the Governour of the province of Quebeck.*

The first difference is in the description of the boundaries of the province. In the old commission this description is in these words :

Boundaries of the province.

“ Our province of Quebeck in America; bounded on the Labrador coast by the river St. John; and from thence by a line drawn from the head of that river through the lake St. John to the south end of the lake Nipissim, from whence the said line crossing the river St. Lawrence and the lake Champlain, in forty-five degrees of northern latitude, passes along the high lands which divide the rivers that empty themselves into the said river St. Lawrence from those which fall into the sea; and also along the north coast of the Bay de Chaleurs and the coast of the gulf of St. Lawrence to Cape Rosieres; and from thence crossing the mouth of the river St. Lawrence by the west end of the island of Anticosti, terminates at the aforesaid river St. John.

In the new commission the description of the province is in these words: “ Our province of Quebeck in America, comprehending

" hending all our territories, islands, and coun-  
 " tries in North-America, bounded by a line  
 " from the bay of Chaleurs along the high  
 " lands, which divide the rivers that empty  
 " themselves into the river St. Lawrence, from  
 " those which fall into the sea, to a point in  
 " forty-five degrees of northern latitude, on  
 " the eastern bank of the river Connecticut;  
 " keeping the same latitude directly west  
 " through the lake Champlain, until in the  
 " same latitude it meets with the river St.  
 " Lawrence; from thence up the eastern bank  
 " of the said river to the lake Ontario; thence  
 " through the lake Ontario, and the river,  
 " commonly called Niagara; and thence along  
 " by the eastern and south-eastern bank of  
 " lake Erie, following the said bank, until  
 " the same shall be intersected by the northern  
 " boundary granted by the charter of the pro-  
 " vince of Pennsylvania, in case the same shall  
 " be so intersected, and from thence along the  
 " said northern and western boundaries of the  
 " said province, until the said western bound-  
 " ary strikes the Ohio; but, in case the said  
 " bank of the said lake shall not be found to  
 " be so intersected, then following the said bank,  
 " until it shall arrive at the point of the said bank  
 " which shall be nearest to the north-western  
 " angle of the province of Pennsylvania; and  
 " thence by a right line to the said north-  
 " western angle of the said province; and thence  
 " along the western boundary of the said pro-  
 " vince,

“ vince, until it strikes the river Ohio, and  
 “ along the bank of the said river westward to  
 “ the banks of Mississipi, and northward  
 “ along the eastern bank of the said river to  
 “ the southern boundary of the territory  
 “ granted to the merchants adventurers of  
 “ England trading to Hudson’s Bay; and  
 “ also all such territories, islands, and coun-  
 “ tries, which have, since the tenth of Fe-  
 “ bruary, 1763, been made part of the go-  
 “ vernment of Newfoundland, as aforesaid.”

Laws to be  
 observed  
 by the Go-  
 vernour. The next difference is in the clause directing  
 the Governour how to act. In the old com-  
 mission the words are these; “ According to  
 “ the several powers and directions granted  
 “ or appointed you by this present com-  
 “ mission, &c. and according to such reason-  
 “ able laws and statutes as shall hereafter be  
 “ made and agreed upon by you, with the  
 “ advice and consent of the council and assem-  
 “ bly of our said province under your govern-  
 “ ment, in such manner and form as is herein  
 “ after expressed.”

In the new commission this clause is as  
 follows: “ According to the several powers  
 “ and directions granted or appointed you by  
 “ this present commission, &c. and according  
 “ to such ordinances as shall hereafter be  
 “ made and agreed upon by you, with the  
 “ advice and consent of the council of our  
 “ said province under your government, in  
 “ such

“ such man-  
 “ expressed.”

The third  
 missions is as  
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 commissions)  
 the following  
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 be admitted i-  
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 of the Preten-  
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 “ dants, as re-  
 “ faith of the  
 “ professes the  
 “ it is therefo-  
 “ all cases wh-  
 “ admitted, e-  
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\* N. B. By vir-  
 intitled to hold m-  
 Quebeck; so that  
 there, supposing th-  
 troops, in that or  
 the crown, than th-  
 by the mutiny-act,  
 asserted.

“ such manner and form as is herein after  
 “ expressed.”

The third difference between the two commissions is as follows. After the clause concerning the oaths to be taken by the members of the council, (which is the same in both commissions) there is in the new commission the following clause directing, that the Roman-Catholick members of the council shall be admitted into it without taking either the oath of supremacy or the oath of abjuration of the Pretender's title to the crown, which are required of the protestant members of it. This new clause is in these words. “ And <sup>Roman-Catholicks preferred</sup>  
 “ whereas we may find it expedient for our <sup>to offices of</sup>  
 “ service, that our council of our said pro-<sup>trust to be</sup>  
 “ vince should be in part composed of such <sup>excused</sup>  
 “ of our Canadian subjects, or their descen-<sup>from ab-</sup>  
 “ dants, as remain within the same under the <sup>juring the</sup>  
 “ faith of the treaty of Paris, and who may <sup>Pope and</sup>  
 “ profess the religion of the church of Rome ; <sup>the Pre-</sup>  
 “ it is therefore our will and pleasure, that in <sup>tender.</sup>  
 “ all cases where such persons shall or may be  
 “ admitted, either into our said council or  
 “ into any other offices,\* they shall be exempted  
 “ from

\* N. B. By virtue of this clause Roman-Catholicks are intitled to hold military commissions in the province of Quebeck; so that a popish army might lawfully be raised there, supposing that the king can lawfully raise any other troops, in that or any of the other out-lying dominions of the crown, than those allowed every year by the parliament by the mutiny-act, as some lawyers are said lately to have asserted.



“ from all tests, and from taking any other  
 “ oath than that prescribed in and by an act  
 “ of parliament, passed in the fourteenth year  
 “ of our reign, intituled, *An act for making*  
 “ *more effectual provision for the government of*  
 “ *the province of Quebeck in North-America ;*  
 “ and also the usual oath for the due execution  
 “ of their places and trusts respectively.”

Lieute-  
 nant-Gov-  
 ernours of  
 Montreal  
 and Trois  
 Rivieres. Fourth difference. In the old commission  
 the Governour is directed to administer the  
 usual state-oaths to the Lieutenant-governours  
 of Montreal and Trois Rivières : in the new  
 commission no mention is made of these Lieu-  
 tenant-governours.

Power of  
 the Govern-  
 our to  
 call an as-  
 sembly. Fifth difference. In the old commission  
 there is a clause empowering the Governour,  
 with the advice and consent of the council of  
 the province, to call an assembly of the free-  
 holders, and to cause the usual oaths and the  
 declaration against transubstantiation to be ad-  
 ministered to the persons chosen into the  
 assembly, before they take their seats there.  
 In the new commission this clause is intirely  
 omitted ; so that the Governour has it not now  
 in his power to summon an assembly, though  
 it should be thought by his Majesty expedient  
 to do so.

The sixth and the four following differences  
 between the two commissions are in the clause  
 which

taking any other  
in and by an act  
the fourteenth year  
*An act for making  
the government of  
North-America ;*  
the due execution  
respectively."

the old commission  
to administer the  
tenant-governours  
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the old commission  
ing the Governour,  
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following differences  
as are in the clause  
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which confers the power of making laws. In <sup>Power of</sup> the old commission this clause is as follows. <sup>making</sup> laws.

“ And we do hereby declare, that the persons  
“ so elected and qualified shall be called The  
“ assembly of that our province of Quebeck ;  
“ and that you, the said James Murray, by  
“ and with the advice and consent of our said  
“ council and assembly, or the major part of  
“ them, shall have full power and authority  
“ to make, constitute, and ordain, laws, sta-  
“ tutes, and ordinances, for the publick peace,  
“ welfare, and good government of our said  
“ province, and of the people and inhabitants  
“ thereof, and such others as shall resort  
“ thereunto, and for the benefit of us, our  
“ heirs and successors ; which said laws, sta-  
“ tutes, and ordinances, are not to be repug-  
“ nant, but, as near as may be, agreeable to  
“ the laws and statutes of this our kingdom  
“ of Great-Britain.

“ Provided that all such laws, statutes, and  
“ ordinances, of what nature or duration so-  
“ ever they be, shall be, within three months,  
“ or sooner, after the making thereof, trans-  
“ mitted to us, under our seal of our said  
“ province, for our approbation or disallow-  
“ ance of the same, as also duplicates thereof,  
“ by the next conveyance.

“ And in case any, or all, of the said laws,  
“ statutes, and ordinances, not before con-  
“ firmed

“ firmed by us, shall at any time be disallowed  
 “ and not approved, and so signified by us,  
 “ our heirs and successors, under our, or  
 “ their, signet and sign manual, or by order  
 “ of our, or their, privy council, unto you,  
 “ the said James Murray, or to the com-  
 “ mander in chief of our said province for  
 “ the time being, then such and so many of  
 “ the said laws, statutes, and ordinances, as  
 “ shall be so disallowed and not approved,  
 “ shall from thenceforth cease, determine,  
 “ and become utterly void and of no effect;  
 “ any thing to the contrary thereof notwith-  
 “ standing.

“ And to the end that nothing may be  
 “ passed or done by our said council or assem-  
 “ bly to the prejudice of us, our heirs and  
 “ successors, we will and ordain that you the  
 “ said James Murray shall have and enjoy a  
 “ negative voice in the making and passing all  
 “ laws, statutes, and ordinances, as aforesaid;  
 “ and that you shall and may likewise, from  
 “ time to time, as you shall judge necessary,  
 “ adjourn, prorogue, or dissolve all general  
 “ assemblies as aforesaid.”

In the new commission the clause upon this  
 subject is as follows. “ And we do hereby  
 “ give and grant unto you, the said Guy  
 “ Carleton, full power and authority, with  
 “ the advice and consent of our said council,  
 “ to

“ to make ordinances for the peace, welfare,  
 “ and good government of the said province,  
 “ and of the people and inhabitants thereof,  
 “ and such others, as shall resort thereunto,  
 “ and for the benefit of us, our heirs and suc-  
 “ cessors: PROVIDED always, that nothing  
 “ herein contained shall extend, or be con-  
 “ strued to extend to the authorising and im-  
 “ powering the passing any ordinance or ordi-  
 “ nances for laying any taxes or duties within  
 “ the said province; such rates and taxes only  
 “ excepted, as the inhabitants of any town or  
 “ district within our said province may be  
 “ authorised by any ordinance passed by you,  
 “ with the advice and consent of the said  
 “ council, to assess, levy, and apply within  
 “ the said town or district for the purpose of  
 “ making roads, erecting and repairing pub-  
 “ lick buildings, or for any other purpose  
 “ respecting the local convenience and æcono-  
 “ my of such town or district: PROVIDED  
 “ also, that every ordinance, so to be made  
 “ by you, by and with the advice and consent  
 “ of the said council, shall be, within six  
 “ months from the passing thereof, transmitted  
 “ to us under our seal of our said province for  
 “ our approbation or disallowance of the same;  
 “ as also duplicates thereof by the next con-  
 “ veyance; and in case any, or all of the said  
 “ ordinances, shall at any time be disallowed  
 “ and not approved, and so signified by us,  
 “ our heirs and successors by an order in their,  
 “ to

“ or our privy council unto you, the said Guy  
 “ Carleton, or to the commander in chief of  
 “ our said province for the time being, then  
 “ such and so many of the said ordinances, as  
 “ shall be so disallowed and not approved;  
 “ shall, from the promulgation of the said order  
 “ in council within the said province, cease;  
 “ determine, and become utterly void and of no  
 “ effect: PROVIDED also, that no ordinance  
 “ touching religion, or by which any punish-  
 “ ment may be inflicted greater than fine or  
 “ imprisonment for three months, shall be of  
 “ any force or effect, until the same shall have  
 “ been allowed and confirmed by us, our  
 “ heirs and successors, and such allowance  
 “ or confirmation signified to you, or to the  
 “ commander in chief of our said province  
 “ for the time being, by their or our order  
 “ in their or our privy council.

“ Provided also, that no ordinance shall  
 “ be passed at any meeting of the council;  
 “ where less than a majority of the whole  
 “ council is present, or at any time, except  
 “ between the first day of January and the  
 “ first day of May, unless upon some urgent  
 “ occasion; in which case every member  
 “ thereof resident at the town of Quebeck;  
 “ or within fifty miles thereof, shall be per-  
 “ sonally summoned to attend the same: and  
 “ to the end that nothing may be passed or  
 “ done by our said council to the prejudice,  
 “ of

“ of us, our heirs and successors, we will and  
 “ ordain, that you, the said Guy Carleton,  
 “ shall have and enjoy a negative voice in the  
 “ making and passing of all ordinances, as  
 “ afore said.”

These two clauses differ from each other  
 in the following points.

By the old commission the Governour,  
 council, and assembly are empowered to make  
 laws, statutes, and ordinances for the pro-  
 vince, *that are not to be repugnant, but, as  
 near as may be, agreeable to the laws of Eng-  
 land.* By the new commission the Governour  
 and council only, (without an assembly,) are  
 empowered to make ordinances for the pro-  
 vince for every purpose but the imposition of  
 taxes; and also for that purpose in certain  
 excepted cases. And there is no provisoe  
 that the ordinances they shall pass shall not  
 be repugnant to the laws of England. This  
 therefore is the sixth difference between the  
 two commissions.

The next difference between these two  
 clauses, or the seventh difference between the  
 two commissions, is this.

In the old commission the Governour is  
 directed to send over to England copies of the  
 ordinances that are passed by the assembly,  
 D d 2 within

Times appointed for sending new ordinances to England, to be allowed or disallowed by the king.

within the space of three months after they are passed, to be allowed or disallowed by the King's Majesty, as he shall think proper. In the new commission the Governour is directed to send over the like copies of the ordinances passed by the legislative council, within the space of six months after they are passed, to be allowed or disallowed by the King's Majesty, as he shall think proper.

The next, or third, difference between these two clauses, or the eighth difference between the two commissions, is this.

In the old commission it is said, that, if any of the ordinances passed by the Governour, council, and assembly, that have not been before confirmed by the King's Majesty, shall at any time be disallowed by him, it shall, from the time of the signification of such his Majesty's disallowance, become void and of no effect. From the natural import of these words, "*not before confirmed by us,*" it should seem that an ordinance passed by the Governour, council, and assembly of the province, under the old commission, and that had been afterwards confirmed by his Majesty by his order in council, could not at any future period be disallowed by him. But in the new commission these words, "*not before confirmed by us,*" are omitted; so that the King seems to retain a power of disallowing the ordinances passed

passed by the Governour and legislative council under the new commission at the distance of forty or fifty years after they have been passed, or any other future period, how distant soever, even though he should have confirmed them by his order in council.

Perpetual power of the crown to repeal the ordinances of the province,

The fourth difference between these two clauses, or the ninth difference between the two commissions, is this.

By the old commission all the ordinances that should be passed by the Governour, council, and assembly, were to be in force immediately from the time of their passing, unless a clause should be inserted in them expressly suspending their operation for a certain time, or till his Majesty had confirmed them by his order in council. But by the new commission no ordinance concerning religion, or by which any punishment greater than fine or imprisonment for three months may be inflicted, is to be of force in the province till it has been confirmed by the King by his order in his privy-council. But it must be observed that, with this confirmation of the King by his order in council, any ordinance whatsoever, either concerning religion or any new and severe punishment or mode of trial, or any thing else, except the imposition of taxes, may, (for aught that appears to the contrary in this commission,) be established and executed in the

Ordinances of certain kinds are not to be in force till they have been confirmed by the king's order in council.



the province; the restriction above-mentioned in the old commission, which directed that the ordinances should not be repugnant, but, as near as may be, agreeable to, the laws of England, being omitted in the new one.

N. B. The expression used in this part of the new commission and in the act of parliament on which it is founded, of *a punishment greater than fine or imprisonment for three months*, is a very loose one, since it is very difficult to compare the magnitudes of punishments of different kinds with each other. The expression ought rather to have been, *any other punishments than those of fine and imprisonment, or any imprisonment for more than three months*: for that, I presume, was the meaning of the person, (whoever he was,) that drew up that act of parliament.

Power of  
adjourning  
and pro-  
roguing  
the coun-  
cil.

The fifth difference between these two clauses, or the tenth difference between the two commissions, is as follows. In the old commission the Governour is impowered to adjourn, prorogue, or dissolve all general assemblies of the freeholders: but in the new commission there are no words to impower the Governour to adjourn or prorogue the legislative council. Quære, whether it is the intention of government that the legislative council shall continue sitting for the purpose of making laws for the whole four months  
from

from the first of January to the first of May? or may they adjourn, or prorogue, themselves by their own authority without the order of the Governour? or what is to be done in this matter?

The eleventh difference between the two commissions is this. In the old commission the Governour is impowered, by the advice and with the consent of the council of the province, to issue out for the support of the government of the province, and not otherwise, all publick monies that should be raised in the province by any act of assembly. And in the new commission the Governour is impowered, by the advice, and with the consent, of the legislative council of the province, to issue out by his warrants, for the support of the government, and not otherwise, the publick monies granted and raised for the publick uses of the said province, without the words, *raised by any act hereafter to be made within our said province*, which are in the old commission. This change is necessary on account of the restriction of the power of the Governour and legislative council of the province with respect to the imposition of taxes; which makes it impossible that any publick monies should be raised by any act to be made within the province.

N. B. This clause of the Governour's new commission, which impowers him, with the  
advice

advice and consent of the legislative council of the province, to issue out by his warrants, for the support of the government of the province, and not otherwise, the publick monies granted and raised for the publick uses of the said province, seems to be hardly consistent with the following clause in the act of parliament which passed in the summer 1774, at the same time as the act for regulating the government of the province of Quebeck, and which granted to the King's Majesty certain duties on rum, brandy, and molasses imported into the said province. This clause directs, *That all the monies that shall arise by the said duties (except the necessary charges of raising, collecting, levying, recovering, answering, paying, and accounting for the same,) shall be paid by the collector of his Majesty's customs into the hands of his Majesty's receiver-general in the said province for the time being, and shall be applied in the first place in making a more certain and adequate provision towards defraying the expences of the administration of justice and of the support of civil government in the said province: and that the Lord High Treasurer, or Commissioners of his Majesty's Treasury, or any three, or more, of them, for the time being, shall be, and is, or are, hereby empowered, from time to time, by any warrant, or warrants, under his, or their, hand, or hands, to cause such money to be applied out of the said produce of the said duties, towards defraying the said expences; and that the residue of the said duties*

*duties shall remain and be reserved in the hands of the said receiver-general for the future disposition of parliament.* By this clause the monies arising from these duties are to be applied, to the purposes for which they are raised, by the warrants of the commissioners of the treasury: whereas the above-mentioned clause in the new commission of the Governour gives him a power, with the consent of the legislative council, to issue the publick monies raised in the province by his warrants. Quære, by whose warrants the receiver-general of the province of Quebeck may lawfully pay the monies arising from these duties; by those of the commissioners of the treasury only, or by those of the Governour of the province, with the consent of the legislative council? See the Stat. 14 Geo. III. cap. 88. intituled, "*An act to establish a fund towards further defraying the charges of the administration of justice, and support of the civil government, within the province of Quebeck in America.*"

The twelfth and last difference between the two commissions is this. There is in both commissions a clause empowering the Governour, with the consent of the council, to grant lands in the province: and the words of this clause are the same in both commissions. But in the old commission this clause is followed by a proviso directing that the grants which shall be made by virtue of it, shall be

E e

made

made agreeably to the King's instructions to the Governour, and that the said instructions shall be published in the province, and entered on record, in like manner as the grants of land themselves are directed to be entered. But this provisoe is omitted in the new commission. The words of this provisoe are as follows. " Provided the same be conformable  
 " to the instructions herewith delivered to  
 " you, or to such other instructions as may  
 " hereafter be sent you under our signet and  
 " sign manual, or by our order in our privy  
 " council; which instructions, or any articles  
 " contained therein, or any such order made  
 " in our privy council, so far as the same shall  
 " relate to the granting of lands as aforesaid,  
 " shall from time to time be published in the  
 " province, and entered on record in like  
 " manner as the said grants are hereby di-  
 " rected to be entered." [Quære the reason  
 of omitting this provisoe in the new com-  
 mission. ]

These are all the differences that I have observed between these two commissions. The commissions themselves have been lately published by Mr. Almon.

A Remark

A Remark concerning the power of erecting courts of justice in the province of Quebeck.

**I**N the late act of parliament for regulating the government of the province of Quebeck there is the following clause concerning the establishment of courts of justice in the said province. "*And be it further enacted by the authority aforesaid, That nothing herein contained shall extend, or be construed to extend, to prevent or hinder his Majesty, his heirs and successors, by his or their letters patent under the great seal of Great-Britain, from erecting, constituting, and appointing, such courts of criminal, civil, and ecclesiastical, jurisdiction, within and for the said province of Quebeck, and appointing, from time to time, the judges and officers thereof, as his Majesty, his heirs and successors, shall think necessary and proper for the circumstances of the said province.*"

By this clause it should seem that the courts of justice that are to be erected in the province, in the room of those which are abolished by this act, ought to be erected by letters patent under the great seal of Great-Britain. Yet in the new commission of Governour Carleton there is a clause which impowers the Governour, with the consent

of the legislative council established in the province, to erect such courts of judicature as he and they shall think fit and necessary for the hearing and determining all causes in it, as well criminal as civil. The words of this clause are as follows. "*And we do by these presents give and grant unto you, the said Guy Carleton, full power and authority, with the advice and consent of our said council, to erect, constitute, and establish, such and so many courts of judicature and publick justice within our said province under your government, as you and they shall think fit and necessary for the hearing and determining all causes, as well criminal as civil, and for awarding execution thereupon, with all reasonable and necessary powers, authorities, fees, and privileges, belonging thereunto.*"

Quære, whether this clause of the commission is not void, as being contrary to the aforesaid clause of the act of parliament, which supposes that the courts of justice in the province will be erected by the King's letters patent under the great seal of Great-Britain;---or whether, 2dly, an ordinance of the Governour and council of the province may be considered as equivalent to letters patent under the great seal of Great-Britain, because it is passed in pursuance of the powers granted to the Governour by his commission of governour, which is under the great seal of Great-Britain;---or whether, 3dly, as the words of the  
act

act of parliament do not expressly prohibit the King from delegating to the Governour, by his commission under the great seal of Great-Britain, a power of erecting courts of justice in the province, but only reserve to him the power of doing it himself by his letters patent, if he shall so think fit, the King ought not to be supposed to be at liberty to make such a delegation of his power in this behalf to his Governour, in the same manner as he would have been if the clause above-recited had not been inserted in the act.---- Yet the safest and most regular way of proceeding in this business seems to be to erect the necessary courts of justice in the province by his Majesty's letters patent under the great seal of Great-Britain, agreeably to the supposition and reservation of the act of parliament. And, as to ecclesiastical courts, (if any such are to be established,) they can only be established by the King's letters patent, because the above-recited clause in the Governour's commission does not make any mention of them, but only speaks of courts of justice *for determining causes criminal and civil*. This matter seems to be worthy of further consideration.

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It is said that the present Lieutenant-governour of the province of Quebeck, Hector Theophilus Cramahé, Esq; has acted in the capacity of Lieutenant-governour since General Carleton's



Carleton's return into the province as Governour. Quære, whether this is not irregular, the commission of Lieutenant-governour empowering him to act only *in case of the death, or during the absence, of the Captain-general and Governour in chief of the said province.* At least such was the tenour of the commission of Lieutenant-governour granted to General Carleton in the year 1766, when General Murray was Governour in chief of the province. That commission was as follows.

Commission of Lieutenant-Governour  
of the province of Quebeck in North  
America.

GEORGE R.

GEORGE the THIRD, *by the grace of God, King of Great-Britain, France, and Ireland, defender of the faith, and so forth: To our trusty and well-beloved GUY CARLETON, Esquire, greeting:*

WE, reposing especial trust and confidence in your loyalty, integrity, and ability, do, by these presents, constitute and appoint you to be our Lieutenant-Governour of our province of Quebeck, in America; to have, hold, exercise, and enjoy the said place and office during our pleasure, with all rights, privileges, profits, perquisites, and advantages to the same belonging or appertaining.

And

And further, in case of the death, or during the absence, of our Captain-general and Governour in chief of our said province of Quebec, now, and for the time being, we do hereby authorise and require you to exercise and perform all and singular the powers and directions contained in our commission to our Captain-general and Governour in chief, according to such instructions as he has already received from us, and such further orders and instructions as he, or you, shall hereafter receive from us.

And we do hereby command all and singular our officers, ministers, and loving subjects in our said province, and all others whom it may concern, to take due notice hereof, and to give their ready obedience accordingly.

Given at our court at St. James's, the seventh of April, 1766, in the sixth year of our reign.

By his Majesty's command.

(Signed) H. S. CONWAY.

Guy Carleton, Esq; Lt. Governour of Quebec.

Entered as follows.

Entered at the Treasury.

(Signed) THO<sup>s</sup>. TOMKYNS.

Entered in the office of the Lords Commissioners for Trade and Plantations.

(Signed) S. BRADBURY.

A Re-

And

A Remark concerning the illegality of  
the arrest of Mr. THOMAS WALKER  
in October, 1775.

**I**T is well known that the King of Great-Britain, though he is the fountain of all civil and military authority in the kingdom, yet cannot lawfully, by his own immediate warrant under his hand and seal, cause any of his subjects to be arrested or imprisoned. The reason assigned for this personal incapacity of the supreme magistrate of the country to exercise these acts of civil power, is a very just and satisfactory one: it is because he is not amenable to any of the courts of justice in the kingdom, as a defendant, to answer the complaints of any of his subjects concerning any injuries he may have done them by the improper exercise of his authority. Since therefore he is not compellable to make satisfaction to the persons whom he might wrongfully imprison, the law says he shall not have power to imprison any body at all, but that, if he shall attempt to do so, his warrant of commitment under his hand and seal shall not be deemed of sufficient authority to justify the jailor in detaining the person whom he shall have committed to his custody, or to protect him against a civil action of trespass and false imprisonment brought against him by the person so imprisoned.

imprisoned. This is clear and settled law, and of very long standing. For, in the year-book of the first year of Henry VII. page 4, placito 5, we meet with the following short, but curious, passage, which was afterwards cited by Sir Edward Coke in the debates on the famous Petition of right. *Hussey, chief justice, disoit, Que Sir John Markham disoit au roi Edward le 4, que il ne poit arrester un homme sur suspicion de treason ou felonie, sicome ascuns de ses lieges puissent; parceque, si il face tort, le parti ne poit aver action.* “Hussey, (the chief justice of the King’s-bench in the first year of Henry VII.) said, that Sir John Markham, (who had been chief justice in the reign of Edward IV.) had said to King Edward IV. that he could not arrest any man upon suspicion of treason or felony, as some of his Majesty’s liege subjects might do; for this reason, that, if he was to do wrong, the injured party could have no action against him.” No inconvenience arises from this restraint upon the personal power of the King; because there are always magistrates enough appointed by him, who have authority to commit all offenders against the laws to prison upon just and sufficient information given before them upon oath, and who (when they adhere to the rules which the law prescribes,) are sufficiently protected by the law in the execution of this part of their duty, to be above all fear of being molested on that account.

The same law subsists in the American provinces with respect to the power of the Governour ; and for the same reason. He cannot imprison any of the king's subjects under his government by his own warrant, or order, of commitment ; because he cannot be sued and compelled to pay damages to the parties whom he might thereby have injured, in the courts of the province of which he is governour. General Carleton therefore had no authority to cause Mr. Thomas Walker of Montreal to be arrested for high treason, or any other crime, by his own warrant, or order, even tho' we should suppose Mr. Walker to have been guilty of it, and the general to have had the fullest information, upon the oaths of credible witnesses, that he was so. But this could only be done by Mr. Hey, the chief justice of the province, if he really was chief justice of the province at that time, that is, if his commission of chief justice had been renewed since the first of May last, when his former commission was (together with all the other judicial commissions in the province,) vacated by the Quebeck-act. If he was not chief justice of the province at that time, that arrest of Mr. Walker ought to have been made (if it could be legally made at all,) by Messieurs Frazer, Marteilhe, and Rotville, the three conservators of the peace for the district of Montreal (mentioned above in page 154) whom General Carleton appointed to that new office on the 1st day of May, 1775, to pre-

vent

vent the total anarchy into which the province would otherwise have been thrown by the vacating clause of the Quebec-act. It is true indeed that just objections may be made even to their authority, because they were appointed, (as I understand,) by the single authority of the Governour, without the concurrence of the council of the province; whereas they ought, according to the clause herein before cited, (in page 220,) from the Governour's new commission, to have been appointed by the Governour with the advice and consent of the said council. For the appointment of the first new judges by commissions specifying the powers they are to exercise, after the abolition of all the former courts of justice in the province by the vacating clause of the Quebec-act, *is in truth erecting new courts of judicature*, which the commission directs to be done with the consent of the council: and it is only when the courts of judicature of the province have been regularly established in it, and their powers and jurisdictions legally settled and defined, (either by the King's letters patent under the great seal of Great-Britain, agreeably to the power reserved to his Majesty in the Quebec-act, or by the joint act of the Governour and council of the province, agreeably to the clause above-mentioned in the Governour's new commission,) that the Governour, (according to his commission,) may by his single authority appoint the judges who are to fill them. How-

ever, those conservators of the peace, if they were not legal magistrates duely appointed according to the directions of the commission, were the persons who came the nearest to that character of any persons in the province: and therefore they, and not the Governour, ought to have issued their warrant to arrest Mr. Walker for high treason, if in truth there was sufficient information upon oath to justify such a step. And this was the conduct General Carleton pursued in November, 1766, when he was Lieutenant-governour of the province. He did not then himself issue warrants to apprehend offenders; but left the six gentlemen at Montreal, who were charged upon the oath of one Mac-Govock, (an accomplice,) with a concern in the cruel assault and wounding of this very Mr. Thomas Walker on the sixth day of December, 1764, to be apprehended by the warrant of Mr. Hey, the chief justice of the province; and only gave an order to the worthy Lieutenant-colonel Maffey, (who was at that time the commanding officer at Montreal,) to give the provost-marshal, or sheriff, of the district of Montreal such a guard of soldiers, to assist him in the execution of the chief justice's warrant, as he should desire. This was acting regularly and agreeably to law. I cannot conceive therefore how it comes to pass that on the late occasion he has taken upon him to issue his own warrant, or order, to apprehend Mr. Walker, unless it be  
upon

upon a supposition that he was authorized to do so by the martial law, which he had established in the province. But, (besides that he had established martial law in the province at a time when it ought not to have been established, because justice could have been administered by the King's courts in the province in the usual manner,) I presume it is sufficiently evident, from the authorities cited above in the foregoing Reflections on Martial Law, that that species of law relates only to mariners and soldiers and the persons who join themselves to them, and consequently could not be legally exercised with respect to Mr. Thomas Walker, who was not either a soldier or a militia-man, but continued in the capacity of a man in trade, carrying on his pot-ash works at his country house at Assumption.

It is plain therefore that this arrest of Mr. Walker by the Governour's own order, is not to be justified either by the principles of martial law or by those of the common or the statute law of England. If therefore it can be justified at all, it must be by supposing that, by the revival of the laws and customs of Canada, *in all matters of property and civil rights*, by the late Quebeck-act, the high powers of government exercised in that province by the French governours and intendants, in the time of the French government, are



are again revived and vested in the person of the Governour. Now, if this be the ground upon which this arrest of Mr. Walker is to be justified, it is a plain and strong confirmation of the apprehension entertained by Mr. Dunning at the time of debating the Quebeck-bill in the House of Commons, that such a re-establishment of an arbitrary authority in the Governour would be the consequence of that pernicious act. The words *matters of property and civil rights* are exceedingly extensive, and therefore exceedingly dangerous. To common ears they seemed to convey no other meaning than this, "that in the descent of landed estates, the dower of widows, the distribution of the effects of persons who die intestate, the customary dues of seigniors from their tenants, (such as their right to a toll from them for grinding their corn at their, (the seigniors) mills, and their right to a fine upon the alienation of their lands,) and the like indifferent matters, which are no way connected with the liberty of the subject, the former laws and customs of Canada should be observed." But it is a well-known maxim, that *Dolus versatur in generalibus*; and therefore Mr. Dunning, with his usual penetration and sagacity, suspected that on this occasion *more might be meant than met the ear*, and that the arbitrary powers of government exercised formerly by the French governours and intendants might be intended to be revived by them: at least he thought that

that they might afterwards be made use of for that purpose, though it should not have been intended by the framers and supporters of the bill. He therefore suggested the necessity of inserting a short clause in the bill for giving the inhabitants of that province, in express terms, the benefit of the writ of *habeas corpus*, and of all the laws of England that relate to the protection of the liberty of the subject. And, in the further progress of the bill, Mr. Dempster made a motion for the insertion of such a clause: but it was soon put to the vote, and carried in the negative. But now, from this arrest of Mr. Walker by the Governour's own order, (supposing it to have been done under the authority of the late act,) the necessity of inserting such a clause is quite apparent.

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In the *Account of the Proceedings, &c.* pages 50,---74. I have inserted a draught of an act of parliament for establishing in the province of Quebec, for the space of seven years only, a legislative council of as free and independent a constitution as I could contrive, with a restriction on their power with respect to the imposition of taxes. I have since thought that the four following restrictions, with respect to the power of making laws, would also be highly useful. They should be introduced

duced in page 63, immediately after the first provisoe (which is against the power of taxation,) and before the second provisoe, which relates to the number of members of which the council is to consist, so as themselves to be the second, third, fourth, and fifth provisoes, or the third, fourth, fifth and sixth sections, of the draught.

Four additional PROVISOES, to be inserted in the draught of an act of parliament for establishing a legislative council in the province of Quebec, printed in the *Account of the Proceedings, &c.* pages 50, 51, &c. 74.

**PROVIDED ALSO, and IT IS HEREBY FURTHER ENACTED,** that none of the said laws, statutes, and ordinances shall appoint any capital punishment, or any punishment affecting the members of any of his Majesty's subjects in the said province, or any other punishment whatsoever but fine and imprisonment, for the new offences which they shall find it necessary to create; and that, so far as any of the said laws, statutes, or ordinances shall appoint any capital punishments, or any other punishments than fine and imprisonment, they shall be utterly void and of no effect whatsoever.

IV. PRO-

IV. PROVIDED ALSO, and IT IS HEREBY FURTHER ENACTED, that none of the said laws, statutes, or ordinances, that shall ordain any crime to be punished by an imprisonment of more than three calendar months, shall be in force until it shall have been sent over to England, and shall have been approved and allowed by the King's Majesty by his order in his privy council, and the said royal allowance of the same shall have been made known to the people of the said province by publishing the said order in council in the Quebeck Gazette.

V. PROVIDED ALSO, and IT IS HEREBY FURTHER ENACTED, that none of the said laws, statutes, or ordinances, shall relate to any alteration of Religion in the province, or to the encouragement or discouragement of either the Roman-Catholick or the Protestant religion in the same; and that, so far as any of them shall have any such tendency, they shall be utterly void and of no authority whatsoever.

VI. PROVIDED ALSO, and IT IS HEREBY FURTHER ENACTED, that none of the said laws, statutes, or ordinances, shall in any wise abridge, or diminish, the liberties, rights, and immunities of his Majesty's subjects in the said province, that are set forth in the good statute of the third year

of the reign of the late King Charles the first, commonly called *The Petition of Right*, or in the statute of the thirty-first year of the reign of the late King Charles the second, concerning the writ of *Habeas corpus*, intituled, “ *An act for the better securing the liberty of the subject, and for prevention of imprisonments beyond the seas*; or in the statute of the first year of the reign of the late King William and Queen Mary, intituled, “ *An act declaring the rights and liberties of the subject, and settling the succession of the crown*;” and that, so far as any of them shall have any such tendency, they shall be utterly void and of no authority whatsoever.

With these additional provisions the legislative council above-mentioned, (which differs widely, as we have shewn in the *Account of the Proceedings, &c.* from that which is established by the late Quebeck-act,) might perhaps be a tolerable instrument of government for the province of Quebeck for a few years; though, I confess, a much *less desirable one*, to all lovers of liberty, than an assembly chosen by the people. I have only proposed it upon a supposition that his Majesty’s ministers of state should persist in their resolution not to suffer an assembly to be established in the province: in which case it will be useful to lessen the evils, that may be apprehended from a legislative council, as much as possible. It is with

with that view only that I formerly prepared the above-mentioned draught of an act of parliament for establishing a legislative council in the province of as safe and free a constitution as I could devise: and with the same view I have now added to that draught these further provisions for regulating and restraining its powers. If any laws creating new felonies, or other crimes that may require other punishments than those of fine and imprisonment; or any laws concerning religion; should hereafter be thought to be expedient for the province; the safest and best way of proceeding in matters of so important a nature, will be to establish them by new acts of the British parliament itself, passed, as the occasions shall require, for that purpose.

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Reflections on the probable consequences of employing Canadian troops against the people of New-England and the other united provinces of America.

First published in a Letter to the Printer of the *Publick Advertiser*, on the 16th of August, 1775.

AS it is certain, by advices received from Canada, that General Carleton is endeavouring to raise forces amongst the inhabitants

of that province, to be sent against the rebel provincials in the Massachusetts Bay and province of New-York; and as many people, from an opinion of the courage and activity of the Canadians, and their skill in the American manner of making war by bush-fighting, seem to entertain great hopes of good success from this measure, I think it may not be improper to lay before the publick, by the means of your paper, some reasons of weight that I have heard alledged upon this subject by persons well acquainted with that country, which seem to me to prove beyond a doubt that this project (which seems at first so plausible,) will be attended with consequences of a quite contrary kind, most pernicious to his Majesty's service in America.

In stating these reasons, I shall suppose that General Carleton is able to raise a body of six thousand Canadians, zealously disposed from principles of religion, and (if you please) of new-born loyalty to their conqueror and sovereign, to act against the other Americans; for this seems to have been the hope and view of those who are inclined to try this measure, as well as of those who advised and promoted the late Quebeck-act, which seems to have been intended to keep the Canadians in a disposition to be so employed; yet I must observe at the same time, that the latest advices from Quebeck represent the Canadians as very  
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averse to this service, and as having actually refused to engage in it as volunteers. What they will do if they should be *ordered* or *pressed* into the service in the King's name by General Carleton (who has lately established martial law in the province, seemingly with a view to be able to use this method of raising them, since the province at the time of his establishing martial law was in a state of perfect tranquillity, and the courts of justice at full liberty to sit and administer justice, according to the usual forms of law, with perfect peace and safety) remains yet to be seen. But in general we know that persons that are forced into a service that is disagreeable to them, are not apt to exert themselves in it with zeal and spirit. However, let us for a moment suppose them raised and well-disposed to act with vigour against the other Americans; the question is, whether the employing them in this manner will do more good than harm? Now I apprehend that the King's service in America, and the reduction of the rebel provincials, would be better promoted by keeping the Canadians at home within their own province in a state of neutrality with respect to the present contest, but yet ready to defend their own province against the incursions of the Americans, than by carrying this same formidable body of six thousand Canadians (and the most sanguine partizans of the measure do not presume to think of a greater number) out of the limits of  
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of Canada to make war upon the other Americans,

For, in the first place, if Canada is neuter, all the corn they are able to export (which is between four and five hundred thousand bushels) may be sent as a supply to General Gage's troops at Boston, who otherwise must be supplied with corn either from England and Ireland, across the Atlantic Ocean, or from Nova-Scotia, which I believe does not afford so large a quantity for exportation as Canada, more especially at this time, when great numbers of people are gone thither from the continent of America, to avoid the calamities of war. And a good deal of live cattle may be sent in the same manner from Canada to General Gage's army. Now this, I conceive, must be an object of great importance to the King's troops at Boston, to whom all the rest of the continent of America affords not a pound of bread. But if the Canadians break their neutrality, and march out of their province against the other Americans, this advantage will be totally lost: for the other Americans will, in return for these hostilities, most infallibly make incursions into Canada, and destroy both the corn and the habitations of the Canadians. This they can easily do whenever they please, because they are in possession of those two very important fortresses, Ticonderoga and Crown Point, which

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are the very *gates* of Canada; without which no troops can pass either into or out of that province, otherwise than by sea, with the tedious navigation of the river St. Lawrence, the mouth of which is no less than 360 miles distant from the town of Quebec, and 540 from Montreal. How these most capital posts came to be surprized by the provincials, let those persons explain whose duty it was to preserve them. But now that the provincials have got possession of them, it is probable they will keep it for a long time, as it will be a work of exceeding great difficulty to retake them. And while they do keep possession of them, it is most certain they have it in their power, whenever they please, to pour in parties of three or four hundred men into the richest and most fertile part of the province, about Montreal, to burn the houses, and destroy the corn and other stores of every kind. Nor let it be imagined that the Canadians can hinder them from doing so, so long as they are masters of those two posts, even though we should allow the Canadians to be braver men, better soldiers, better marksmen, better woodsmen, better bush-fighters, better every thing than the English Americans, and able to beat double their own number of the latter wherever they meet them, as some people have been taught to believe them: for while these terrible six thousand Canadians are employed in the English provinces in laying waste the  
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back-settlements of Massachusetts Bay, Connecticut, and New-York, or are encamped with General Gage at Boston, or where-ever else he shall take post, in order to enable him to make head against the grand provincial army, they will be evidently unable to defend their own province against the above-mentioned incursions of the other Americans from Crown Point: and as to the Canadians, that will then be left in Canada, they will not be above 10,000 men more in the whole country able to bear arms, who will be dispersed in separate habitations along the banks of the river St. Lawrence, and two or three rivers that run into it, for the space of 250 or 300 miles, taking care of their private affairs, and particularly of the cultivation of their lands. Now what resistance can these people make to two or three different parties of Americans, of 200 men each, entering the province from Lake Champlain at the same time, and taking different routs through the country, one on each side of the river Richlieu, (which takes its rise from Lake Champlain) and another along the south-side of the river St. Lawrence, and perhaps a fourth venturing to cross the St. Lawrence, and lay waste the lands on the north side of it, and all bent only upon devastation, and retreating as soon as they perceive any body of people collected to resist them? I believe every one must be sensible, that it will be impossible to prevent, or resist, such

such incursions. And as a proof from experience that it would be so, it should be remembered that the celebrated Major Rogers once penetrated in this manner into Canada, in the last war, (while it yet belonged to the French king, and the Canadians were most strenuous in defence of it) as far as the town of Three Rivers, that is, 90 miles beyond Montreal, in the road to Quebeck: and then, upon notice that some French troops were marching to oppose him, retreated again with safety into the adjoining English provinces. These incursions will therefore be unavoidable, so long as Crown Point and Ticonderoga remain in the hands of the provincials, unless a strong body of troops be encamped on some neighbouring part of the banks of Lake Champlain, or perhaps on the two opposite banks of it, to watch the motions of the provincials at Crown Point, and the parties that may be sent from thence to make incursions into Canada. And these troops too should be possessed of a considerable water-force of large boats and small sloops of war upon the lake, (which must all be built upon it) to oppose the Americans upon the lake, in case a strong party of them should be bold enough to venture to pass along the lake between the two royal camps on the banks of it, and land on the further side of them within the province; an expedition which, though hazardous, would be by no means impossible, if we consider the en-

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thusiasm with which they appear to be animated in the present unhappy contest, even when they are fighting against their protestant fellow-subjects, his Majesty's regular forces, who are only doing their duty, and obeying their orders in endeavouring to support the authority of parliament; and much more therefore when we consider the rage and indignation which they would feel at having been invaded and molested by their late conquered enemies, the Canadians, those bloody, savage, popish dogs, as they would call them, whom the parliament seems, by the late Quebec-act, resolved to continue in the condition of papists and slaves, on purpose to cut their throats. For these are the sentiments which the Americans have expressed concerning the late Quebec-act; and this is the spirit with which they would certainly act against the Canadians, in case the Canadians should take part in this war against them: so that in truth, the cruellest thing that can be done to the poor Canadians (whatever kindness may be professed towards them) is to involve them in the present war. And indeed I believe they are sensible of the extreme danger of their acting offensively on this occasion against their more numerous and powerful neighbours in the English colonies, and are on that account, as well as others, most anxiously desirous to continue neutral. They are conscious that it is not merely *defeat* in battle, but *extermination*,

tion, or the most severe subjection, that they would have to fear from the provincials, in case they should act against them, and fail of success in the contest. However, to return to what I set out with mentioning, I presume it is now sufficiently apparent that, if the Canadians are made to act against the rebel Americans, their country will infallibly be laid waste, and will consequently be no longer able to supply the King's troops with corn and other provisions. And this I apprehend will be a considerable disadvantage to the King's service, and perhaps more than counterbalance the advantages that may be derived from the assistance of a body of Canadians.

But, in the second place, I apprehend that the devastation of Canada, by the incursions of the English Americans, will have even a still further bad effect. For it is probable, that the Canadians who are engaged in the King's service, when they hear that their houses are burnt, and their lands laid waste by the provincials, and their wives and children reduced to a starving condition, will think it necessary to desert this fatal service which exposes them to such a variety of misery, and make what terms they can for themselves with the Americans; in which case it is much to be apprehended, that they will be forced even to join the Americans in the opposition to Great-Britain. The popular leaders amongst

the English Americans may then, when they have them at their mercy, protest against what they will style, (as heretofore in England in the civil war) *a detestable neutrality*, and insist upon their joining with the other provinces in supporting what they call the common cause of American liberty; and distress and necessity will oblige the Canadians to comply. And thus by this attempt to make use of the Canadians to reduce the revolted provinces, we may cause them to be ultimately drawn in to the wide-extending vortex of this unhappy American rebellion.

Such will probably be the effects of this unconstitutional and left-handed policy of arming a set of new popish subjects to reduce the other Americans to obedience. It would therefore, as I conceive, be a much wiser conduct to preserve the Canadians in a state of neutrality and tranquillity, which I am informed the provincials are at present willing to allow them. These thoughts, Mr. Printer, are not wholly derived from my own consideration of this important subject, but have been partly suggested by other persons who are well acquainted with the situation of that province, and the temper of its inhabitants; and they have appeared to me so just, that I have found myself obliged to assent to them: and for this reason I take the liberty of offering them to the consideration of such of your  
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readers as take a concern in the present most melancholy contest. I heartily wish that all the Americans were reduced to the obedience of parliament; and I wish still more heartily that they would, of their own accord, return to it, and lay aside their apprehensions of the remote and possible, but, in my opinion, improbable oppressions, under which they may labour in some future time from any exertion of that authority: for hitherto (I mean, before the Boston Port-bill and other subsequent acts of parliament, which are the effects, not the causes, of their resistance to parliamentary authority) I do not see that they have had any just, or at least any great, subject of complaint. But things that are right and necessary (as the support of the authority of Great-Britain in America appears to me to be) ought to be done in *a right manner*, and *by right and proper instruments*. And the friends of the principles which established the present royal family on the throne of these kingdoms, and excluded from it, by the act of settlement in the 12th year of king William, the only son of the preceding king (then a boy of 12 years of age) merely because he was bred a Papist, and consequently was thought likely to entertain in his future and riper years, maxims of government incompatible with the English constitution, will never be brought to think that an army of popish subjects of the crown, whether Canadians or Irish (for those also are



are talked of on the present occasion) is a fit instrument for this purpose. It is a cankered and poisonous instrument, that will add venom to the wounds of the nation, and lay the foundation of much greater disorders and difficulties than those it is employed to remove.

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In the year 1772 Mr. Maseres had prepared, for the consideration of his Majesty's ministers of state, a very long draught of an act of parliament for settling the affairs of Religion in the province of Quebeck. It contained 55 printed pages in folio. The aim of it was to tolerate in the most ample manner the worship of the Roman-Catholick religion in that province, agreeably to the capitulation in 1760 and treaty of peace in 1763; but, at the same time, to countenance and encourage the Protestant religion in so powerful and efficacious a manner that it could hardly have failed of gaining ground and spreading itself amongst the Canadians in the province, and more especially among the priests, by very quick degrees. The convents of monks and nuns were to have been gently suppressed, by prohibiting the admission of new members into them. The popish bishop was to have been restrained from exercising the powers of suspending and depriving priests of their benefices

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or the right of exercising their spiritual functions, and was to have been permitted only to ordain new priests, when necessary, to confirm adult persons, and consecrate new churches and burying-grounds, and other things to holy uses: in short, he was to have been reduced to the necessity of being only, what he had probably stipulated in the year 1766 that he would be, *un simple faiseur de prêtres*. And after the death of Monsieur Briand, the present bishop, it was provided that there should be no popish bishop at all in the province: but that the ordination of the young Roman-Catholick priests should be otherwise provided for in the manner herein above described, in pages 142, 143. And in the room of the said popish bishop, a protestant bishop was to have been sent into the province. In the mean time the patronage of all the benefices in the province, (except those which belonged to private patrons,) was to have been vested in the Governour of the province, instead of the bishop; and the parish-priests were to have been permitted to marry, without any danger of losing their livings, provided they could obtain the consent of their parishioners to their retaining them. And, to encourage them to do so, their widows were to have had a dower out of their benefices, amounting to one sixth part of its annual value, where the benefice was worth more than a thousand bushels of corn *per annum*. And even the monks

monks and nuns now in the province were to have been permitted to marry, if they had chose it, without losing their shares of the revenues of the convents they respectively belonged to. And other important regulations were recommended, which would have operated powerfully in favour of the protestant religion. With all these precautions taken in favour of protestantism, it must be confessed that there was a clause in this draught of an act of parliament, by which the Roman-Catholick religion would have been in some degree established; as it directed that the Romish priests should have a legal right to their tythes from their Roman-Catholick parishioners only, in the manner prescribed by the late act. This perhaps was going too far in favour of the popish religion:---most certainly it was going farther than the British nation were obliged to go by the capitulation and treaty of peace, as has been shewn at large in the *Account of the Proceedings, &c.* pages 181,---199. But it was done for the sake of the Protestant, not the Roman-Catholick, religion, and to keep the Canadians in the habit of paying tythes, to the end that, when they should have embraced the Protestant religion, (which it was supposed would happen in the course of no very great number of years by means of the encouragements given to that religion by the other provisions of the bill,) the protestant clergymen, who  
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would then possess the benefices of the province, might not be destitute of a reasonable maintenance. But in this draught the exclusion of all other persons in the province who refused to take the oath of supremacy, (except the said parish-priests,) from places of trust and profit, prescribed by the grand, fundamental, statute of the 1st of Elizabeth (above-mentioned in the *Account of the Proceedings, &c.* pages 186, 187, &c.) was continued; so that no popish judges or other magistrates could have been appointed under it, and much less could a popish army (commissions in which are the most important and dangerous offices of trust and power that can be held,) have been raised under it.

The having prepared a draught of an act of parliament of the nature and tendency above-described, for the settlement of the affairs of religion in that province, ought not, one would imagine, to have subjected the person who prepared it, to the imputation of having been the adviser of the establishment of popery in the said province in the manner in which it has been established by the late Quebeck-act, that is, by merely and solely giving the Romish priests a legal right to their tythes, without any provisions whatsoever for the encouragement of the Protestant religion; since the object of the said draught was evidently to undermine and extinguish, (by gentle methods,) the Roman-Catholick religion; whereas that of the late act



The priests, however, continued to take their tythes, &c. unmolested, 'till the definitive treaty in February, 1763, though there had not been any declaration of his Majesty's pleasure concerning it.

No demand with respect to religion was made by the French king at settling the treaty, but the "toleration of that of the Church of Rome," which was agreed to *as far as the laws of England would permit*.

This important point standing thus, occasion'd the present Mr. Cursitor Baron Maseres, his Majesty's late attorney-general of the province, to state it as a matter of doubt, "whether the payment of the tythes (though the people still continued it) could be legally demanded, and to whom it ought to be made?"\* and to propose that provision should be made by act of parliament, that "the Roman-Catholick priests or curates, should be entitled to demand and receive from all the Roman-Catholick inhabitants of their parishes in the place, and by the name of tythes, as heretofore, the thirteenth part of the fruits of the earth, &c."† which

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\* Sect. 4th, clause 3d, of a draught of an act of parliament for tolerating the Roman-Catholick religion in the province of Quebeck, and encouraging and introducing the Protestant, &c. Drawn about 1769 or 1770 by Francis Maseres, Esq; his Majesty's Attorney-general to the province.

† Section the 11th of the above.

we find adopted in the act so much objected to: How justly I leave to your readers, after considering the state of the case as it is entire before them.

Popery, in the strict sense of the term, is so far from being established by it in Canada, as has been no less iniquitously than absurdly asserted in the promissory advertisements of candidates for seats in parliament, and stipulations of factions of their electors, in the publications of the conventicle of anarchical deputation in America, and those of every incendiary writer at home, that it is not so much as tolerated, but totally interdicted and suppressed.

For the royal supremacy is not only established and the papal abolished in the province, but the clergy are obliged to hold their benefices *in actual acknowledgment of the law* under an express deed or grant from his Majesty as Supreme in ecclesiasticals, instead of holding them by institution or licence from a bishop appointed or approved of by the Roman see; and all persons there, in any cases having recourse to the jurisdiction of that see are undoubtedly liable to the penalties of the acts of Henry VIII. and Elizabeth, as it is according to those acts that the royal supremacy is established.

The religion; by which I understand the confession of faith with the worship and ceremonies

monies of the Church of Rome, are so far from established, *or more than tolerated*, as your more ingenuous correspondent has expressed it, that I hope henceforth, he will think with me, that it is *only tolerated*, and that full as much advantage is taken as in equity ought, of the doubtful state of the right of tythes by restraining the clergy's demand of them to their own people only, and appropriating all that may arise from the lands of others to the encouragement of protestantism in the support of a protestant clergy.

But however this may be, and though it clearly appears to me, that the matter as now stated affords no more support for his thinking otherwise, than as I at first had apprehended it to be, it is a justice equally due from me to the publick and to him, to retract my mistake.

He that writes for truth, and not for party, will not be the second, publickly to detect an error he may have entertained in arguing for it, except when he is not the first in perceiving it.

I am, SIR, &c.

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In answer to the charge insinuated in this letter, to wit, "that I had advised, in my draught of an act of parliament above-mentioned, the re-establishment of the Roman-Catholick religion in the province of Quebeck, in the manner in which it is re-established by the late Quebeck act," I sent to the printer of the Norwich Mercury, in the month of August, 1775, the following long letter, signed *Philalethes*, in which an account is given of some of the principal provisions and regulations, concerning the affairs of religion in that province, that were contained in the aforesaid draught of an act of parliament. Many of these regulations will probably be thought, by some people, to be of too bold and dangerous a nature, to have been fit to be *immediately* adopted by the legislature, and carried into execution in the province, even though the tendency of them may be approved. And I even doubted myself of the expediency of making them *immediately*; though, when the settlement of the affairs of religion, in that province, should be taken into consideration by the parliament, they seemed to me to be the most beneficial measures that could be taken upon that subject. But, as there were, at that time, no complaints in the province concerning religion, but the Canadians were perfectly easy and satisfied with the compleat toleration of the Roman-Catholick religion, which they then enjoyed, I thought,

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thought, it would have been best to postpone the consideration of that delicate subject to some future period, at the distance of a few years, and to settle only the civil affairs of the province by *an immediate* regulation; by determining, in what points the French laws should be revived, or continued, in the province, and in what manner the courts of judicature should be constituted, and justice should be administered in them, and by establishing a legislature, of some kind or other, for the purpose of making the new ordinances and regulations, which the emergencies of the province might, from time to time, make necessary; which might be done, either by calling an assembly of the people, in pursuance of the king's proclamation of October, 1763, or, (in case, that was not thought to be expedient,) by delegating a certain degree of legislative authority to the governour and council only, without an assembly, for a small number of years, and till it should become more practicable to summon an assembly, and, for that purpose, increasing the number of the counsellors to thirty-one, and making them totally independent of the governour, though not of the crown, and providing the other restrictions and regulations of their power, which are mentioned in the draught of an act of parliament upon that subject, above recited in the *Account of the Proceedings*, &c. pages 50-74. The judicious settlement of these important matters,

ters, to the satisfaction of the Canadians, at that time, would, as I conceived, have prepared them to receive, with respect and a chearful obedience, in a few years after, the regulations, which it might then be judged expedient to make in the province, for the more compleat settlement of the affairs of religion in it, the maintenance of the king's supremacy, the abolition of the convents and of the power of the popish bishop, and the gradual diminution, and ultimate extinction, of the Roman-Catholick, and encouragement of the protestant, religion. But his Majesty's ministers thought proper, rather to settle the whole of these different and important matters at one stroke, in the manner we have seen, by the Quebeck act. My letter, in answer to the above-mentioned letter in the Norwich Mercury, was as follows :

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An Account of some of the principal Regulations contained in a Draught of an Act of Parliament for settling the Affairs of Religion in the Province of Quebeck, prepared by Mr. MASERES in the Summer of the Year 1772.

First published in the *Norwich Mercury* on the 26th day of August, and the 2d, the 9th, and the 16th days of Sept. 1775.

To the Printer of the *Norwich Mercury*.

S I R,

July 12, 1775.

I Have some time since been shewn a letter in your paper of the 11th of last February, in which the anonymous writer of it has represented Mr. MASERES, the present Curfitor Baron of the Exchequer and late Attorney General of the province of Quebeck, as having been the original adviser of that much-censured clause in the late Quebeck-act, which gives the Roman-Catholick priests a legal right to their tythes and other antient dues from the Roman-Catholick inhabitants of their respective parishes ; by which I suppose that letter-writer would insinuate that the said clause, as it now stands in the late act,

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is agreeable to that gentleman's suggestion. Now this is by no means true, he being known to have lamented the insertion of that clause in the late act, which he considered as an establishment of the popish religion in that province, (though of a less ample and compleat kind than if the priests had been authorised to demand the tythes of their protestant as well as popish parishioners,) to which the British government was not in any degree bound either by the capitulation in 1760 or the treaty of peace in 1763, and for which he did not see any sufficient reason of expedience or policy. Yet it must be confessed, that in a certain draught of an act of parliament for settling the affairs of religion in that province, which had been drawn up by that gentleman in the summer of the year 1772, and of which copies had been sent to several persons of weight and consequence, there was a clause for giving the Romish priests a legal right to their tythes from their popish parishioners, (agreeably to the provision of the late act,) as the above-mentioned letter-writer has asserted. But it would have been right in that letter-writer to have recollected that it is the duty of an impartial witness to relate *the whole truth* concerning every subject upon which he has occasion to give his testimony, as well as to say nothing but the truth. And, if he had done so in the present instance, he would have told his readers that, though it is true that, in the draught alluded to, Mr. Maseres had proposed to give  
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the priests a legal right to the tythes of their popish parishioners, yet that in other parts of the same draught (which contained 55 printed pages in folio,) he had recommended so many provisions of importance that would have tended to encourage the Canadians to abandon the errors of the Church of Rome and embrace the Protestant religion, that instead of perpetuating the Roman-Catholick religion (as the late act of parliament seems likely to do,) that draught would have contributed very powerfully to extinguish it; and this without any violence or persecution, or the least breach of that ample toleration of the worship of their religion to which the people of that country were intitled upon motives of humanity and policy as well as upon the ground of the capitulation and treaty of peace. But it by no means follows that, because he recommended the giving the priests the tythes of their popish parishioners when accompanied with a variety of important provisions for the encouragement of the Protestant religion, and the gradual extinction of that of the Church of Rome, he therefore approves of that clause when it stands singly by itself, without any of those provisions, and can tend only to support and make perpetual the belief of the Roman-Catholick religion. These are surely two very different things; and the writer of the above-mentioned letter ought, in justice to the aforesaid gentleman, to have taken notice that they were so. Some of these provisions in

avour of the Protestant religion, contained in that draught of an act of parliament, were as follows :

In the first place it was proposed that all the convents of monks and nuns in the province, and likewise the religious community of secular priests of the order of St. Sulpicius at Montreal, (who are owners, or upper lords, of the whole island of Montreal, besides several other estates, to the amount, all together, of at least 40000 l. sterling *per annum*;) should be dissolved;--- not by turning the present members of these societies adrift, and immediately seizing their lands into the King's hands; but by making a partition of the lands belonging to each of these religious communities amongst the several members of it, who now hold them in common, and vesting the reversions of their several shares of them in the crown; so that for the future the said lands would not have belonged to all the members of each society in common, but every monk, and nun, and priest of the seminary of St. Sulpicius at Montreal, would have had a separate lot, or parcel, of the lands that had belonged to his or her community, and would have held and enjoyed it during his or her natural life; and, upon the death of each of them, the parcel of land which he or she would thus have held for life, would have accrued to the crown instead of accruing to the surviving members of the society to which such  
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dead person had formerly belonged. They were likewise to have been permitted to marry, if they had chose it, and yet to retain during their lives the parcels of land that would have been so allotted to them, notwithstanding they would thereby have departed from the rules of the religious society to which they had formerly belonged. And, on the other hand, they were to have been permitted to continue in their respective convents and houses during their lives in a state of celibacy, and in the observance of the rules of their respective orders, if they had preferred that manner of life to the other. And it was further provided that the lands which should then have accrued to the crown upon the deaths of the several members of these religious communities, should be vested unalienably in the crown, and the revenues of them applied to the support of the civil government of the province, the whole burthen of which has hitherto been borne by Great-Britain.

This first provision would have soon extinguished the societies of monks and nuns and secular priests of St. Sulpicius throughout the province, without the least injury to any one individual; which would have greatly weakened the power of the popish religion in Canada. For the convents and other religious houses are the nurseries and supports of that religion, and (to use a metaphor not unsuitable to the nature of a religion so adverse and hostile to the British government



government as that is,) may be justly considered as *its head quarters*.

In the second place it was proposed in the said draught of an act of parliament, that the popish bishop of Quebeck should be restrained from exercising the dangerous powers of his office, and confined to the business of ordaining new priests when they were wanted, confirming adult persons, and consecrating churches, church-yards and burying-grounds, and the like, to holy uses, and to the performance of such other ceremonies, of a merely spiritual nature, as seemed to be attended with no inconvenience to the publick. The dangerous powers which he was to have been restrained from exercising, were chiefly those of depriving priests of their benefices, of suspending them from the exercise of their spiritual functions and the enjoyment of the temporal fruits of their benefices, of interdicting divine worship in churches and chapels, and of excommunicating persons and prohibiting priests from administering the sacraments to them, as he is well known to have done with respect to Mr. Lewis de Lotbiniere, a Romish priest in that province of a good family and considerable abilities, who had the misfortune to fall under his displeasure in the year 1771. And special penalties were appointed in that draught to be inflicted on the said bishop, in case he should presume to exercise any of the aforesaid dangerous and prohibited

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bited powers of his office, and should be con-  
 victed in the supream court of the province of  
 having done so. — And it was further pro-  
 vided in the said draught that, after the death  
 or resignation of the present popish bishop of  
 Quebeck, no other popish bishop should be  
 permitted to exercise any authority at all (even  
 in those less dangerous articles of ordaining  
 priests, confirming adults, &c.) in the pro-  
 vince; but that a protestant bishop should re-  
 side there in his stead, for the convenience and  
 satisfaction of the clergy of the church of Eng-  
 land in America, who much wish for a pro-  
 testant bishop in America, and who could go to  
 Quebeck to be ordained with more ease than  
 they can cross the seas. And, to supply the  
 want of a popish bishop in the province with  
 respect to the necessary business of ordaining  
 new Roman-Catholick priests, it was provided  
 in the said draught that the young Canadians  
 who should be educated for the service of the  
 church of Rome in Canada at the college, or  
 seminary, of Quebeck (which it was proposed  
 to keep up, with all its revenues, its rules and  
 orders, and publick teachers, for that purpose,)  
 should be sent to England at the publick ex-  
 pence, and from England to Munster in Ger-  
 many, or the popish canton of Lucerne in  
 Switzerland, or to some other popish country  
 in Europe, (other than France,) to be ordained  
 priests by the popish bishop of such country;  
 and should afterwards return to the province of  
 Quebeck

Quebeck in the same manner, at the publick expence, there to supply the livings that might happen to be vacant. This expence would have been but trifling, probably not more than 3 or 400l. a year, and the voyage to England and journey to Munster or Lucerne, (or whatever other place his Majesty should have chosen for that purpose,) would have been considered as a tour of pleasure rather than a hardship, by the young candidates for holy orders who would have taken them. And thus the ordination of new priests would have been provided for without permitting a popish bishop to reside in Canada for that purpose; and that party of the more zealous and high-church Roman-Catholicks in the province of Quebeck, who wished to have a bishop resident amongst them for the greater splendour and more permanent establishment of their religion, would have been deprived of almost the only plausible pretext they could use with the British government to obtain one, and by the use of which they did so far prevail (as it is generally supposed) with the ministers of state in England in the winter 1765, and spring 1766, as to obtain for the present bishop of Quebeck, John Oliver Briand, a verbal, secret permission, (by connivance only, and without any legal licence,) to go back to Canada (where he had before lived many years as a priest,) in the office and character of bishop of Quebeck, upon a stipulation that he should confine

fine himself to the single business of ordaining priests, or be only (according to the expression which he himself is said to have made use of to his friends in the month of June, 1766, upon his first arrival at Quebeck in that character,) *un simple faiseur de prêtres*. But the event has unfortunately shewn that such stipulations are not much to be depended on.

By these provisions the power of the popish bishop of Quebeck (which now operates as a center of union to all the Roman catholicks in the province, so as to keep them in a strict adherence to their religion, and to prevent and check in the birth, the first inclinations that any of them may feel to deviate in any degree from it or abandon any of its tenets,) would have been restrained within due bounds during the life of the present bishop and totally abolished after his death; and every Canadian would have been left at full liberty to be as much or as little a Roman catholick as he should have pleased. And this liberty would probably very soon have operated in favour of the protestant religion, since it is certain that terror and extream ignorance are the only means by which the popish religion is supported in any country.

In the third place it was proposed in the said draught of an act of parliament, that all the Romish priests in the said province should have

been permitted to marry without losing their benefices on that account, unless a memorial was presented to the Governour by a majority of the housekeepers of the parish of which any such married priest should have been rector, complaining of his marriage as rendering him incapable, in their opinion, of exercising the priestly office, and praying the Governour to remove him and give them another priest that was unmarried; in which case their petition should have been complied with. And it was proposed that the parishioners should be at liberty to make such a memorial against him only during the last eighteen months of the first two years after his marriage, and, if they omitted to make it during that time, should be deemed to have acquiesced in his marriage, and consented to have him continued as their rector; and that all complaints against him afterwards on that account should be of no effect.

It is probable that many of the parish-priests might, by great moderation, affability, piety, and diligence in the discharge of their parochial duties, have acquired a sufficient degree of interest with their parishioners to have afforded them a kind of moral certainty that no such memorial signed by more than half the housekeepers in the parish would be presented against them in case they should enter into the married state: and under this persuasion we  
 may

may suppose that, when an act of parliament should have declared it lawful for them to do so, many of them would have entered into that state. And this, it is evident, would have been a great step towards their becoming protestants with respect to other doctrines. And, the more to encourage them to take this important step, it was further proposed in the said draught of an act of parliament, that in all the more valuable benefices in the province, whose annual amount was more than one thousand bushels of corn, the widows of the married incumbents should have a dower during their lives out of the benefices of their deceased husbands to the amount of one sixth part of the annual value of the benefice, or one half of the dower of widows allowed by the common law of England out of lay estates.

And in the fourth place it was provided in the said draught of an act of parliament that the justices of the peace should have had a power to join people in holy matrimony as well as the priests of either the popish or protestant religion; and this by a simple ceremony set forth in the draught, which would have suited persons of all religions in the world. This was intended to facilitate the intermarriages of the British and French inhabitants of the province, and to prevent the obstructions to them that might arise either from the parties themselves, who might scruple to be married ac-

ording to the ceremonies of a religion they did not believe, or from the priests, who might refuse to marry persons who were not both of the religion they professed.

These, Mr. Printer, are some of the provisions made in that draught of an act of parliament for the encouragement of the protestant religion in the province of Quebec, by which the author of it hoped that the inconveniencies that might otherwise arise from the revival of the legal right of the popish clergy to their tythes might be counter-acted and prevented. And even with these provisions, he doubted whether it would be expedient to revive this right, and was inclined to think that it would have been better to postpone the final settlement of the affairs of religion in the province to some future time, and to settle for the present only the laws relating to civil and temporal matters, and to establish a proper legislature in the province. And with this view he prepared three separate draughts of acts of parliament, to wit, one for establishing a legislative council in the province, (consisting of 31 protestant members, all unremoveable and unsuspendible by the Governour, and removeable only by the King in council,) for seven years, and the end of which time he hoped it might be found practicable and expedient to permit the people of that country to chuse an assembly, agreeably to the King's promise in his proclamation

clamation of October, 1763; a second for settling the laws of the province, and determining in what points the French laws should be permitted to continue, and in what points they should be superseded by the English laws; and this third draught for settling the affairs of religion. And he wished either that the two former draughts should be adopted by parliament, or that the matters contained in them should be settled in some better manner; and that the latter draught relating to religion, might have been laid aside for the present, and reserved for future consideration. And this he the rather thought adviseable, because the Canadians in general were very easy upon the matter of their religion, of which they enjoyed the fullest toleration that can be conceived, to their own great and most agreeable astonishment: and, as to the article of tythes, they were, for the most part, very well pleased with the liberty they had enjoyed ever since the capitulation in September 1760, of paying them, or not, as they liked best, which, they said, kept their priests in good order, and made them less insolent than they had used to be. And accordingly we find that the French petition of Dec. 1773 (which was presented to the King's Majesty, about the month of February, 1774, and seems to have been the ground of the late act of parliament for regulating the government of that province,) makes no mention of any grievances relating to the exercise of the popish



popish religion, and contains no request that the people may be obliged to pay the priests their tythes. Indeed the main object of that petition seems to have been not a liberty to profess the doctrines, or attend the worship of the Roman catholick religion; (for that they already enjoyed in the highest degree possible;) ---- nor a compulsive law to force them to pay the tythes to their priests; (for that they were well-pleas'd to have left to their own choice and discretion;) ---- but a removal of the incapacity, arising from their religion, to hold places of trust and power: which removal is a thing totally distinct from toleration, and was a degree of indulgence, or favour, which it is not thought safe to grant even to British subjects of England and Ireland, born under the allegiance of the crown, that profess the Roman catholick religion; and to which therefore the Canadians could be by no means intitled; and which, in the opinion of the gentleman who prepared these draughts of acts of parliament, it was not expedient to grant them. Upon these accounts he thought there was no occasion to make any immediate settlement concerning the affairs of religion in the province, but that it would have been more prudent to leave them in their then present condition, with the tythes voluntary, &c. till two or three years after the other matters, which required a more immediate attention, namely, the settlement of the laws concerning temporal matters

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matters and the appointment of a provincial legislature, should have been dispatched. But, as his Majesty's ministers might be of a different opinion, and might resolve to settle every thing relating to the province at one stroke, he drew up that third draught above-mentioned of an act for settling the affairs of religion, in which he inserted a provision for every article upon the subject that he could recollect to stand in need of one, and endeavoured throughout the whole of it, to give the most ample toleration to the Roman-catholick religion, and even, it must be confessed, went so far as to give the priests a legal right to their tythes; but, at the same time, abolished the monasteries both of monks and nuns; ---- restrained the power of the present popish bishop within safe and reasonable bounds; ----- prevented his having a popish successor; and directed that a protestant bishop should after his death, or resignation, reside in the province in his stead, in order to transfer all the weight arising from the splendour of that office to the protestant scale; ---- encouraged the popish priests to marry, and provided a dower for their wives; ---- facilitated the marriages of protestants with Roman-catholicks, by appointing a simple ceremony for that purpose, to be performed by a civil magistrate; ---- continued upon Roman-catholicks the legal incapacity to hold places of trust and power, under which they lie in other parts of the British empire, and which would necessarily have

have had a silent, but continual, operation to induce them to quit the errors of popery;---and took other precautions that were favourable to the protestant religion, and were likely to encourage both the laity and clergy of Canada to embrace it. These provisions in favour of the protestant religion must be his excuse for having proposed in one part of his draught to give the popish priests a legal right to their tythes, which perhaps after all is a measure that ought not to have been adopted. Whether it ought or not, is a point he must submit to the judgement of candid persons. But thus much is certain and evident, that to give the priests a right to their tythes, when the gift is accompanied with all the provisions above-mentioned to weaken and discountenance the Roman catholick, and encourage and introduce the protestant, religion in the province, is a very different measure from a gift of the same right unaccompanied with those provisions. And consequently a person that had advised the former measure ought not to be supposed on that account to have approved the latter, or to be thought inconsistent with himself if he does not approve it.

Thus much I have thought it necessary to say in vindication of Mr. Maseres from the charge of having been the adviser of the clause in the late act of parliament which gives the priests a legal right to their tythes. But before I entirely quit

quit your paper, I beg leave to add a few words concerning the meaning of the word *establishment* when applied to a religion, which seems to have somewhat puzzled your correspondent the writer of the above-mentioned letter, as well as some other persons. Now it appears to me that there are three different methods in which a religion may be supported, which are distinguished from each other by the words, *Toleration*, *Endowment*, and *Establishment*. When the government of a country permits the professors of a religion to meet together in places of worship of their own building or hiring, and to have divine worship performed in them according to the rites they chuse to adopt, by priests, or ministers, of their own, whom they employ and hire for the purpose; that religion is said to be *tolerated*.

Thus, the Quakers are tolerated in England, and those of the Presbyterians, and other protestant dissenters, who comply with the conditions required by the toleration-act. But the other protestant dissenters who do not comply with those conditions, (and who are at this day much the greater part of the whole body) are not tolerated, but are exposed to the penalties of severe laws for meeting together to worship God according to their conscience, the bishops having twice refused their assent to bills passed by the House of Commons for exempting them from those penalties. And in like manner the

Roman-Catholick religion was tolerated in Canada before the late act of parliament. For the people were permitted to assemble in their churches and chapels to hear mass and to receive the sacraments according to the rites of the Church of Rome, and the priests to officiate therein, without any molestation whatsoever: and the tythes and other profits paid to the priests on this account, were paid voluntarily by the people who followed that mode of worship, without any right in the priests to compel the payment of them by a suit at law. This was *perfect toleration*.

But it is possible that a government, though it may think it necessary in point of justice to permit the followers of a particular religion to meet together in moderate numbers to worship God in their own way, may yet not think it expedient to let that religion take root in the country in a manner that is likely to increase the number of its votaries. And in this case they may forbid its being endowed by gifts of land, or other permanent property, assigned to trustees for the permanent support of it. This, I apprehend, would not be inconsistent with toleration, nor at all unjust towards the professors of such barely-tolerated religion; because every state has a right to judge of the utility of the purposes for which it allows the property of any of its members to be aliened in mortmain.

But

But on the other hand it is possible that a government may think a particular mode of religion, though not worthy to be supported and encouraged by publick authority, yet to be so very innocent and inoffensive to the state that they may indulge the professors of it with a liberty to alien their land, or other property, in mortmain for the permanent support of the ministers and teachers of it; as in England and other countries in Europe, men are permitted to found professorships of the sciences in universities, or to alien a part of their property in mortmain for the maintenance of the professors of them. Where this is permitted with respect to any particular religion, and private persons have made use of such permission, and have settled permanent funds for the maintenance of the ministers and teachers of such religion, that religion may be said *to be endowed*.

Lastly, where the government of a country provide a fund by their own publick authority for the maintenance of the ministers and teachers of any religion, such a religion is said *to be established*.

Thus, before the reformation the popish religion was established in England, because tythes, and other publick funds, were appointed by the law of the land for the maintenance of the priests that taught it. And at the reformation, by the statute of the 1st of Elizabeth,

cap. 1. for abolishing the foreign jurisdiction of the pope; all priests who held benefices were required to abjure the supremacy of the pope, and acknowledge that of the queen; that is, the benefices, or publick funds assigned for the maintenance of the publick teachers of religion, were transferred from the popish priests, who acknowledged the pope to be the head of the church, to the protestant priests who acknowledged the queen to be so: and by that transfer the protestant religion became *established*. This is the only sense in which the Church of England can be said to be established at this day. Its priests are paid for performing its ceremonies, and teaching its doctrines, by funds assigned to them by the publick authority of the state. And in the same sense the Roman-Catholick religion may be said to be established in Canada by the late act of parliament. For a public fund, to wit, the tythes of the popish parishioners, that is, of 49 persons out of 50 throughout the province, is thereby assigned to the Romish priests as a maintenance and reward for performing the ceremonies, and teaching the doctrines of that religion.

I know that some persons have asserted that this measure is not an establishment of the popish religion in Canada, because the protestant parishioners are not obliged to pay tythes to the Romish priests. But this affects only the *quantum* of the provision made for the maintenance

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tenance of those priests and the religion they are to teach. It is somewhat less ample than it would be if the protestants were forced to pay the tythes to them as well as the Roman-catholicks. But the nature and design of the provision are the same in both cases. It is a fund provided by publick authority for the support of priests, to exercise and teach the religion of the church of Rome. And this, I presume, is all that is meant by those who have affirmed that the popish religion is *established* by this act of parliament, and is all that the words, *establishment of a religion*, naturally and usually import.

Before I conclude this letter, I beg leave to observe, that in the draught of the act of parliament for settling the affairs of religion in the province of Quebeck which your correspondent refers to, Mr. Maseres has been mistaken in a point of fact concerning the *quantum* of the tythes paid to the parish priests of Canada in the time of the French government; and your correspondent has adopted the mistake. Mr. Maseres in that draught, has stated the tythes as having been the 13th part of the fruits of the earth, at the time of the conquest of that country. This he did upon the authority of the edict of Lewis the 14th, in the year 1663, which originally appointed the payment of tythes in that province, and fixed it at that rate. But upon a complaint of the land-holders  
of



of the province in 1667 to the superiour council of Quebeck, that this was too great a burthen upon their infant settlements, it was, by a provisional ordinance of that council reduced to the 26th bushel of corn threshed out and made fit to put up in the granary; and this reduction was afterwards confirmed by an edict of Lewis the 14th in 1672, and continued ever after. But this change of the original edict of 1663 was not mentioned in the short and imperfect abstract of the French edicts and ordinances relating to Canada, which Mr. M--- consulted when he was preparing that draught of an act of parliament; and this omission led him into that mistake.

I remain your humble Servant,

PHILALETHES.

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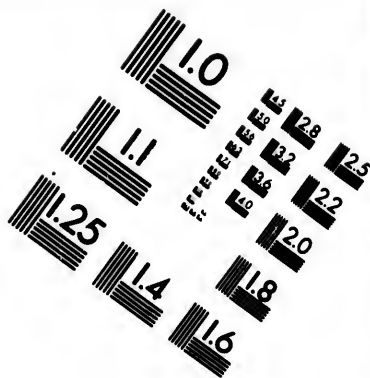
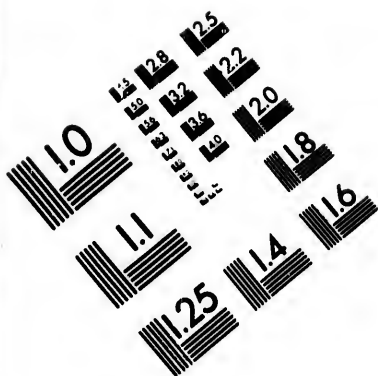
The clause of the above-mentioned draught of an act of parliament for settling the affairs of religion in the province of Quebeck, in which it is proposed, that justices of the peace should have the power of joining persons together in holy matrimony, without any regard to their being protestants or Roman-Catholicks, by a simple, but decent, civil ceremony, seems to me to be so exceedingly useful to the people of that province in its present state,

state, that I shall take the liberty of troubling my readers with a copy of it. It is as follows :

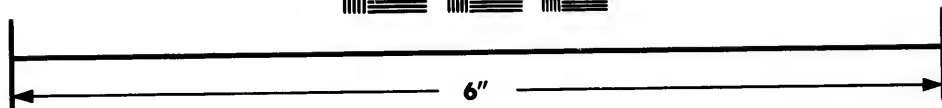
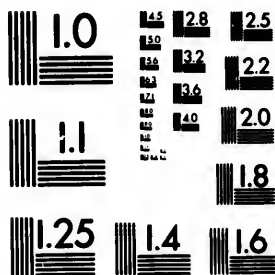
An extract from the aforesaid draught of an act of parliament for settling the affairs of religion in the province of Quebeck, containing that part of it, in which it is proposed that justices of the peace shall have the power of joining persons together in the holy state of matrimony in that province.

SECT. LX. " And whereas it is of great importance to the welfare of the inhabitants of the said province of Quebeck, that all doubts and difficulties concerning the manner of contracting marriage in the same should be removed ; and that the ceremonies necessary to make the marriages therein contracted valid and binding, should be clearly and certainly known ; and that the said ceremonies should be as few and as simple as may be ; to the end that such persons in the said province as are disposed to enter into the holy state of matrimony with each other, may find no difficulty, in all lawful cases, in so doing : And whereas divers of the Roman-Catholick inhabitants of the said province esteem it to be sinful to be married by a protestant priest according to the ceremonies of the church of England ; and the protestant inhabitants of the same in like manner hold it sinful to be married by a Roman-Catholick





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Catholick priest according to the ceremonies of the church of Rome; and many of the Roman-Catholick priests in the said province are unwilling to marry any persons, even according to the ceremonies of the church of Rome, but such as declare themselves to be members of that church: and difficulties have sometimes arisen, and are likely often to arise in time to come, from the said scruples, concerning the marriages of the inhabitants of the said province, more especially where one of the parties is a Roman-Catholick and the other is a protestant, whereby the said marriages either may be retarded, or totally prevented; which would be to the great detriment of the said province: **IT IS THEREFORE ORDAINED AND ENACTED** by the authority aforesaid, that all marriages that have been, or shall be, solemnized in the said province either by a protestant priest of the church of England, according to the ceremonies of the church of England, or by a protestant priest or minister of the church of Scotland according to the ceremonies of the church of Scotland, or by any other protestant priest, or minister, or by a Roman-Catholick priest according to the ceremonies of the church of Rome, and either between two protestants or two Roman-Catholicks, or a protestant and a Roman-Catholick, shall be valid and binding to all intents purposes whatsoever: and likewise, that all marriages that shall be solemnized hereafter in the said province

vince before any justice of the peace in the same, between any persons, of what different sentiments soever with respect to religion, (that are capable by the laws of the said province of contracting matrimony with each other,) according to the form and manner hereafter following, shall be binding and valid, to all intents and purposes whatsoever.

“ LXI. When the two persons, who have agreed to marry each other, shall be come before the justice of the peace in order to be married by him, he shall first interrogate them concerning their ages, and their degree of consanguinity, or affinity, to each other, and other circumstances relative to their legal capacity to contract matrimony with each other; and if he shall be satisfied that they are by law capable of contracting marriage with each other, he shall proceed to solemnize their marriage by directing them to pronounce the following words of contract and promise to each other, and, after they shall have pronounced them, declaring them to be lawful husband and wife to each other.

“ The man shall first, with his right hand, take the woman by her right hand, and, in the presence of the said justice and of at least two credible witnesses, shall plainly and distinctly pronounce these words: “ *I, A. B. do here, in presence of Almighty God, the*

*Searcher of all hearts, and of these witnesses, take thee, C. D. for my wedded wife; and do promise to be unto thee a loving and faithful husband until death shall part us."* Or, if he does not understand English, he shall pronounce a translation of the said words in the French language.

"Then they shall loose their hands for a short space of time: and then the woman shall, with her right hand, take the man by his right hand, and, in presence of the said justice and the said two, or more, credible witnesses, shall plainly and distinctly pronounce these words: *I, C. D. do here, in the presence of Almighty God, the Searcher of all hearts, and of these witnesses, take thee, A. B. for my wedded husband; and do promise to be unto thee a loving, faithful, and obedient wife, until death shall part us."* Or, if she does not understand English, she shall pronounce a translation of the said words in the French language.

And after the said words shall have been thus pronounced by the said man and woman, the said justice of the peace shall declare the said man and woman to be from thenceforth lawful husband and wife to each other in these words: *I, E. F. do declare and pronounce thee, A. B. to be the lawful husband of C. D. here present; and thee, C. D. to be the*



*the lawful wife of A. B. here present. Depart in peace, and live with each other with mutual honour, faith, and love, as becomes godly persons joined together in holy wedlock. And may Almighty God, in whose presence you have promised to be true and faithful to each other during life, sanctify and bless you in your new estate, that ye may please him both in body and soul, and live together in holy love unto your lives end.*

“ LXII. And when the said marriage shall have been thus concluded, the said justice of peace shall make a record thereof in writing in the words following: “ *Be it remembered that on the ——— day of the month of ———, in the year of our Lord Christ ———, A. B. of ——— (mentioning the place of his abode) in the province of Quebec in America, ——— (mentioning his trade, or profession, or other addition) and C. D. of ——— (mentioning the place of her abode) in the said province, ——— (mentioning her trade, or employment, or other addition) came before me, E. F. one of his Majesty's justices of the peace for the district of ——— in the said province, at my house at ———, or in the parish of ———, in the said district, and were then and there joined together in holy wedlock by me, the said E. F. in the presence of G. H. and J. K. and L. M. whose names are hereunto subscribed.*

*In witness whereof I have herewith subscribed my name, and set my seal, on the day and in the year above-mentioned.*

(L. S.) *E. F. justice of the peace  
for the district of— in  
the province of Quebec."*

And the said witnesses, who shall have been present at the said marriage, shall subscribe their names to the said record thereof, in attestation of the same.

And the said justice of peace shall deliver, or transmit, the said record to the justices of the peace of the district in which the said marriage shall have been thus solemnized, at their next court of quarter-sessions of the peace, to be kept amongst the records of the said court as a perpetual testimony of the said marriage.

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A Remark

**A Remark concerning the injustice of the Quebeck-act with respect to such Creditors as have Debts owing to them in that province that were contracted since the 1st of October, 1764.**

**I**N the 42d article of the general capitulation between the Marquis de Vaudreuil and General Amherst, in September, 1760, by which all Canada was surrendered to the crown of Great-Britain, that French general demanded in the behalf of the Canadians, that the custom of Paris, (which had been generally introduced into the province, and made the common law of it, by the French king's edicts,) and the other laws and usages then established in the country, should continue to be observed in it. But General Amherst, instead of complying with this demand, reserved this matter to the determination of the king. The words of this article and of that which immediately precedes it, (to which a reference is made in the answer to this,) are as follows.

**ART. 41.** The French, Canadians, and Acadians, of what state or condition soever, who shall remain in the colony, shall not be forced

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forced to take arms against his Most Christian Majesty or his allies, directly or indirectly, on any occasion whatsoever. The British government shall only require of them an exact neutrality.

To this demand General Amherst made answer in these words.

*They become subjects of the King.*

ART. 42. The French and Canadians shall continue to be governed according to the custom of Paris and the laws and usages established for this country. And they shall not be subject to any other imposts than those which were established under the French dominion.

To this demand General Amherst made answer in these words.

*Answered by the preceding articles, and particularly by the last.*

In the fourth article of the definitive treaty of peace concluded on the 10th day of February, 1763, there is the following clause in favour of the exercise of the worship used in the Church of Rome, with a reference to the laws of Great-Britain as the measure of that intended indulgence.

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“ His Britannick Majesty, on his side, agrees to grant the liberty of the Roman-Catholick religion to the inhabitants of Canada. He will consequently give the most effectual orders, that his new Roman-Catholick subjects may profess the worship of their religion, according to the rites of the Romish church, *as far as the laws of Great-Britain permit.*”

It appears therefore that the king, or the king and parliament together, (for I don't mean to enter into the question whether the king alone, or the king and parliament together, have the right of making laws for countries conquered by, and ceded to, the crown of Great-Britain;) had a right to abolish, or alter, the custom of Paris and other laws and usages heretofore established in Canada, if he should think fit so to do, without any breach of either the capitulation or the treaty of peace; excepting only such parts of those laws as were essentially necessary to the enjoyment of the property of the Canadians, which had been promised them by other articles of the capitulation. Thus, for example, it would have been a breach of the capitulation to abolish the alienation-fines which were due to the owners of seigniories from the purchasers of freehold lands situated in their respective seigniories; because those fines make a considerable part of the property of the seigniors, which

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which has been fully granted to them by the capitulation. But it would not have been a breach of the capitulation to alter the law concerning the dower of widows with respect to marriages hereafter to be contracted, or the law of inheritance with respect to lands which were not entailed, but which the present possessors had a right to dispose of; because nobody's property would have been thereby taken away, but only a new rule would have been established for the future devolution of property, at the death of the present owners, if the said owners should neglect to direct its course in any other channel by their marriage-agreements, or other deeds in their life-time, or by their last wills and testaments at their deaths. Whether alterations of this kind in the antient laws of the country would have been wise or politick, is another question, which I do not here mean to enter into. But I only say that such alterations might have been made without any breach of the capitulation. Much more might alterations of these antient laws in matters relating to personal effects, and personal contracts thereafter to be made, and to the manner of suing for and recovering the debts so contracted, and other such subjects of a commercial nature, have been made without any such breach. We will now inquire *what was done* by his Majesty's authority in consequence of the powers

powers which had been reserved to him in this behalf by the capitulation and treaty of peace.

In the month of October, 1763, about eight months after the conclusion of the definitive treaty of peace above-mentioned, his Majesty published his proclamation, under the great seal of Great-Britain, for erecting four new civil governments, to wit, those of Quebec, East Florida, West Florida, and Granada, in the countries and islands in America, which had been lately ceded to the crown by the said definitive treaty of peace. In this proclamation the king exhorts his subjects, as well of his kingdoms of Great-Britain and Ireland as of his colonies in America, to avail themselves, with all convenient speed, of the great benefits and advantages that must accrue, from the great and valuable acquisitions lately ceded to his Majesty in America, to their commerce, manufactures, and navigation; and, as an encouragement to them to do so, he informs them that, in the commissions he has given to the civil governours of the said four new provinces, he has given the said governours express power and directions, that, so soon as the state and circumstances of the said colonies will admit thereof, they shall, with the advice and consent of the members of his Majesty's councils in the said provinces, summon and call general assemblies of the

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people within the said governments, in such manner as is used in those colonies and provinces in America which are under his Majesty's immediate government; and "*that in the mean time, and until such assemblies can be called, as aforesaid, all persons inhabiting in, or resorting to, his Majesty's said colonies, may confide in his Majesty's royal protection for the enjoyment of the benefit of the laws of his realm of England: and that for that purpose his Majesty had given power under the great seal to the governours of his Majesty's said new colonies to erect and constitute, with the advice of his Majesty's said councils respectively, courts of judicature and publick justice within the said colonies for the hearing and determining all causes, as well criminal as civil, according to law and equity, and, as near as may be, agreeably to the laws of England; with liberty to all persons who may think themselves aggrieved by the sentence of such courts, in all civil cases, to appeal, under the usual limitations and restrictions, to his Majesty in his privy council.*

On the 21st day of November, 1763, about six weeks after the publication of the aforesaid proclamation, his Majesty issued his commission of Captain-general and Governour in chief of the province of Quebeck to Major-general Murray, which was received by him and published in that province in the month of August, 1764. This commission, and the instructions



instructions that accompanied it, seemed every where to presuppose that the laws of England were in force in that province, being full of allusions and references to those laws on a variety of different subjects, and did not contain the least intimation of a saving of any part of the laws and customs that prevailed there in the time of the French government.

It seemed therefore, upon the whole, from the said proclamation and commission, to have been his Majesty's intention, with respect to the said province of Quebeck, to assimilate the laws and government of it to those of the other American colonies and provinces which are under his Majesty's immediate government, and not to continue the municipal laws and customs by which the conquered people had theretofore been governed, any farther than as those laws might be necessary to the preservation of their property. And his Majesty's ministers seem, at the time of passing those instruments, to have been of opinion, that,--- by the refusal of General Amherst to grant to the Canadians the continuance of their antient laws and usages;---and by the reference made in the fourth article of the definitive treaty of peace to the laws of Great-Britain, as the measure of the indulgence intended to be shewn them with respect to the exercise of their religion;---sufficient notice had been given to the conquered inhabitants of that province,

that it was his Majesty's pleasure that they should be governed for the future according to the laws of England:---and that the said inhabitants, after being thus apprised of his Majesty's intention, had consented to be so governed, and had testified their said consent by continuing to reside in the country, and taking the oath of allegiance to his Majesty, when they might have withdrawn themselves from the province, with all their effects and the produce of the sale of their estates, within the eighteen months allowed by his Majesty in the treaty of peace for that purpose.

In pursuance of this supposition that the laws of England had been introduced into the province by the aforesaid proclamation and commission, Governour Murray and his council, in the great ordinance dated on the 17th day of September, 1764, (passed at the commencement of the civil government of the province for the establishment of courts of justice in it,) directed the chief justice of the province, (who was to hold the superiour court, or *court of King's-bench*, established by that ordinance,) *to determine all criminal and civil causes agreeable to the laws of England and the ordinances of the province*; and the judges of the inferiour court established by the said ordinance, (which was called the *court of Common Pleas*,) *to determine the matters before them agreeable to equity, having regard never-  
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*theless to the laws of England, as far as the circumstances and situation of things will permit, until such time as proper ordinances for the information of the people can be established by the Governour and council, agreeable to the laws of England; with this just and prudent provisoe, "that the French laws and customs should be allowed and admitted in all causes in the said court between the natives of the said province, in which the cause of action arose before the 1st day of October, 1764."*

In consequence of these instruments of government, all purporting to introduce the laws of England into the province of Quebeck, those laws were generally understood in the province to have been introduced into it, and consequently to be the rule and measure of all contracts and other civil engagements entered into by the inhabitants of it after the introduction of them, that is, after the establishment of the civil government of the province, or after the said 1st day of October, 1764. And the English inhabitants of the province have more particularly acted upon this supposition in the great credit they have given to the French, or Canadian, inhabitants of it in their extensive dealings with them. For it has been asserted, (and, I believe, with truth,) that three quarters, or more, of the trade of the province is carried on by the English inhabitants: and they have been remarkably free,

free, (even to a degree of imprudence,) in giving credit to the Canadians. This being the case, it is evident that strict justice required that they should have been permitted to recover by the methods of trial and the processes allowed by the English law, the debts which they had permitted the Canadians to contract with them, and which they had contracted with each other, upon the aforesaid just and well-grounded supposition that the English law had been established in the province. For otherwise the government will have led them into an unfortunate situation, (against which the rules of prudence were not a sufficient guard to them,) by first encouraging them to lend their money upon a supposition that the English law was in force in the province, and then, by the abolition of the English law, (to which they trusted,) and the revival of the French law, (to which, it is probable, they would not have trusted,) compelling them to forego the methods of trial and recovery prescribed by the English law, and make use only of those allowed by the French law, to get themselves paid. Yet the Quebeck-act takes no notice of this hardship, and makes no provision against it; but says in few and general words, "*that in all matters of controverly relative to property and civil rights, resort shall be had to the laws of Canada, as the rule for the decision of the same; and all causes that shall hereafter be instituted in any of the*

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*courts of justice, to be appointed within and for the said province by his Majesty, his heirs and successors, shall, with respect to such property and rights, be determined agreeably to the said laws and customs of Canada, until they shall be varied, or altered, by any ordinances that shall, from time to time, be passed in the said province by the Governour, Lieutenant-governour, or Commander in chief for the time being, by and with the advice and consent of the legislative council of the same, to be appointed in manner herein after mentioned."* This clause is, with respect to debts already contracted in the province since the introduction of the English law in October, 1764, an *Ex post facto* law, and consequently unjust. In order to make it consistent with justice, it should have been accompanied with a proviso, that those matters, of which the causes of action had arisen since the 1st of October, 1764, when the English law was established in the province, should be determined according to the rules, and by the methods prescribed by the English law. The like precaution, we have seen above, was taken by General Murray in passing the aforesaid ordinance of September 17, 1764, by which, in pursuance of his Majesty's proclamation, he established the English law in the province. For he accompanied that introduction of the English law with this proviso, (which we have already mentioned,) *that the French laws and customs shall be allowed*

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and admitted in all causes in the said court [of Common-pleas] between the natives of the said province, in which the cause of action arose before the 1st day of October, 1764.

This sudden revival of the French law in the province of Quebeck, in matters of property and civil rights, without any exception with respect to debts already contracted in the province since the introduction of the English law into it, was also injurious to many English merchants residing in London, who had sent goods into the province to a great amount, upon a supposition that the English law was established in it, for which goods large sums of money were still owing to them at the time of passing the Quebeck act. And this was humbly suggested to the house of commons, while they had that act under their consideration, in the printed case of the British merchants trading to Canada, and a delay of at least three years was desired with respect to the revival of the French law in the province, that they might have an opportunity of getting in their debts before the change took place. See the printed case in the *Account of the Proceedings, &c.* pages 202—222, and the paragraph relating to this matter in pages 207, 208, 209. But no regard was paid to this request. Some of these British merchants, residing in London, had many thousand pounds owing to them in the province at the time of passing the Quebeck act.

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Some people will be apt to say concerning these debts, contracted in the province during the establishment of the English law in it, that the revival of the French law can in no degree affect them; ---- that a debt is a debt, and the payment of it must be enforced, by the French law as well as the English, and indeed by the laws of all civilized and commercial nations; and consequently, that no injury is done to the creditors by obliging them to sue under the French law for debts contracted under the English. But this reasoning is by no means just. It is true indeed, that, concerning debts owing upon bonds, or other very clear and positive written instruments, the decisions of all laws are pretty nearly the same; though even here the evidence required to ascertain the execution of them by the parties, will sometimes be different. For, some laws require two witnesses to the proof of a fact, others only one; and some laws require instruments to be made in the presence of publick, authorized, persons, such as notaries, in order to their being binding on the parties, whereas other laws require them to be made only in the presence of honest men: and some laws require strict proof of a man's having done some dishonest action, such as a conviction in a court of justice upon a criminal prosecution, before he can be rejected as a witness to any transaction; whereas other laws are contented with

a slighter proof of bad character, as a ground for such rejection. These are material differences between the laws of different nations, even concerning the validity of clear written instruments. But the law-suits that happen between people concerned in trade, do not usually turn upon these instruments, but upon circumstances of a more doubtful nature. Thus, for example, it is sometimes necessary to prove the delivery of goods that have been delivered; --- at other times, to ascertain their value, when no price has been agreed on between the parties, or when the goods fall short of the quality agreed upon between them; --- at other times, to ascertain the damage received by goods in their passage, and to determine to whom the blame of such damage is to be ascribed, and upon whom the loss, arising from it, shall fall; --- at other times, to ascertain the damages arising by not delivering a certain quantity of goods, of a certain kind and value, at the time appointed between the parties: and, a hundred other instances of the like kind might be mentioned, in all which it is necessary to determine some doubtful and delicate matter of fact. Now, in all these cases, the English law says, a jury of twelve impartial men shall be impannelled to determine these doubtful facts; but the French law says, they shall be determined by the judges only, upon a due consideration of the evidence. Surely,  
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this is a material difference between the two laws, with respect to these commercial litigations! To illustrate this matter by an example, let us suppose, Mr. Thomas Walker of Montreal to be engaged in a law-suit of one of the kinds just now mentioned, with another inhabitant of Montreal. By the English law, (under which the cause of action arose) the matter of fact, and the measure of the damage sustained by Mr. Walker, or his adversary, will be determined by a jury. But, by the French law, concerning matters of property and civil rights, which has been revived by the Quebec act, these things will be determined before Captain John Fraser and Monsieur de Rouville, the judges of the district of Montreal, the former of whom has been long at enmity with Mr. Walker, and the latter of whom seems (by the account of his behaviour, with respect to him, stated in the extract of a letter herein before recited, pages 84, 85,) to have no great affection for him. Can it then be indifferent to Mr. Walker, whether he is to have the capital facts of his law-suit determined by a jury, or by Captain Fraser and Monsieur de Rouville? and is it no injury to him to deprive him by an *ex post facto* law of the former method of trying it, and to force him to take up with the latter? Surely, it must be allowed to be a very great one. This clause, therefore, of the late Quebec act, so far as it affects all

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law-suits in which the cause of action arose since the introduction of the English law into the province, that is, since the 1st of October, 1764, is an *ex post facto* law, and consequently unjust. And, therefore, the honour and justice of the British nation require, that the said clause should either be repealed, or, in this respect, amended.

**A Remark concerning the Payment of Tythes to the Roman-Catholick Priests in the Province of Quebec.**

**A**LMOST all the writers who have undertaken to defend the late Quebec-act, have justified that clause of it which gives the Romish priests a legal right to their tythes from their Roman-Catholick parishioners, by asserting that the faith of the British nation was engaged by the capitulation and treaty of peace to the Canadians, that this favour should be shewn to their religion. In pursuance of this doctrine, some of these gentlemen contend, that the Romish priests in Canada had already an actual right, in point of law, to their tythes before the passing of the late Quebec-act, and that that act only confirmed that right with respect to the Roman-

man-Catholick inhabitants of their respective parishes, and deprived them of it with respect to all the other inhabitants of the said parishes. But others of these gentlemen, who are more discreet and cautious in their assertions, acknowledge that the legal right of the Romish priests to their tythes was suspended, by Gen. Amherst's answer to the demand of the French General upon that head, till the King's pleasure should be declared concerning it; and that his Majesty's pleasure had never been declared upon this subject till the royal assent was given to the Quebeck-act: but they insist, (upon I know not what grounds) that this revival of the priests right to their tythes was agreeable to the spirit of the capitulation and treaty of peace, and that those high national engagements could not have been honourably and liberally carried into execution without it. Both these opinions, I conceive to be erroneous; because the capitulation expressly reserved the matter of tythes to the king's determination, and the treaty of peace, by referring to the laws of England, with respect to the indulgence granted to the Romish religion, must, upon the most liberal construction, be supposed to refer to, and adopt, the statute of the first of queen Elizabeth, for abolishing the foreign jurisdiction of the pope and establishing the supremacy of the crown, and consequently to exclude from a legal possession of ecclesiastical benefices,

beneficees, (of which the tythes make the principal part,) all persons who will not take the oath of supremacy. This subject has been sufficiently explained above in the *Account of the Proceedings, &c.* pages 180 -- 199, to need nothing further to be said about it in this place, in the way of reasoning or argument. But one of the writers in support of the Quebec-act, has had recourse to authority, instead of reason, in support of his assertions upon the subject, and has quoted the opinion of two learned law-officers of the crown, in the year 1765, and a report made by other learned gentlemen in the same offices, in the year 1768, in proof, as he pretends, of the right of the Romish priests at that time, to demand their tythes. This opinion and this report I shall here examine, in order to shew, that they do not properly relate to the question under consideration. The writer, who mentions them, is the author of the pamphlet intitled, "*The Justice and Policy of the late act of parliament for making more effectual provision for the government of the province of Quebec, asserted and proved.*" The whole passage relating to this subject, is contained in the 29th, 30th, 31st, 32d, 33d pages of this pamphlet, and is as follows :

“ But there is still one important consideration in favour of such a plan | as is adopted by the Quebec-act with respect to the popish  
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religion,] which would out-weigh even its impolicy, if *that* could be proved; which is its *justice*. By the 4th article of the treaty of Paris, ratified by the king and approved by parliament, it is stipulated; 'That his Britannick Majesty, on his side, agrees to grant the liberty of the catholick religion to the inhabitants of Canada. He will, consequently, give the most precise and most effectual orders, that his new Roman catholick subjects may profess the worship of their religion, according to the rites of the Romish church, *as far as the laws of Great-Britain permit.*'—Let us then examine how far the laws of England do or do not allow the Canadians the free and publick exercise of their religion, and how far, under the stipulations recited, they are entitled to the common rights of British subjects in that country. Fortunately for my purpose, these cases have been already stated, and the opinions of as able lawyers as this country has produced, have been given upon them. In 1765, the Lords of Trade sent the following query to Sir Fletcher Norton and Sir William De Grey, then attorney and solicitor-general; 'Whether his Majesty's subjects, being Roman-catholicks, and residing in the countries ceded to his Majesty by the treaty of Paris, are not subject, in those colonies, to the incapacities, disabilities and penalties, to which Roman-catholicks in this kingdom are

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‘ are subject by the law thereof?’ To which query those great men answered on the 10th of June, ‘ That they were not.’ And the advocate, attorney, and solicitor general, in their joint report to the privy-council upon the propositions of the board of trade, presented on the 18th of January 1768, state it to be their opinion, ‘ That the several acts of parliament, which impose disabilities and penalties upon the *publick* exercise of the Roman catholick religion, do not extend to Canada; and that his Majesty is not by his prerogative enabled to abolish the dean and chapter of Quebeck, *nor to exempt the protestant inhabitants from paying tithes to the persons, legally entitled to demand them from the Roman-catholicks.*’ Supported by such high authorities, I am surely warranted in asserting, That the Canadians are, by the stipulations in the treaty of Paris, entitled not only to the free and publick exercise of their religion, but are also capable of and entitled to all the rights of British subjects in that province. For, if the laws of England do not disable or restrain them, or make a distinction to their prejudice; they have certainly a right to the privileges and advantages of those laws, in common with other the king’s subjects resorting to Canada; and any subsequent law, or exertion of the king’s prerogative, which should make a distinction, which the laws in being, when the treaty was ratified,

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ratified, do not make, would be cruel, arbitrary and unjust, and a violation of the solemn stipulations of that treaty. Under what colour or pretence, then (let me ask the opposers of the late act of parliament), is it that the Canadians ought to have been deprived of all share in the civil offices of the province; that their clergy should be stripped of their maintenance, and the whole people made subject to laws enacted by an assembly, from which they were to be excluded, and in the election of whose members they were to be deprived of all share? Upon what ground or pretence is it asserted, That a clause, which expressly takes away from the parish priests their legal title to tithes of the lands held by protestants, and which our great crown-lawyers declared the king could not deprive them of by his prerogative, can be said to establish popery, and grant only a precarious toleration to the church of England?" Thus far the aforesaid author of *the Justice and Policy, &c.*

Concerning these opinions, I beg leave to make the following observations:

In the first place, the question proposed to these great lawyers, Sir Fletcher Norton and Sir William De Grey, in 1765, to wit, "*Whether his Majesty's subjects being Roman-Catholicks and residing in the countries ceded to his Majesty in America by the treaty of Paris,*

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are not subject, in those colonies, to the incapacities, disabilities, and penalties, to which Roman-Catholics in this kingdom are subject by the laws thereof," is drawn up in a very inaccurate manner. For it does not state the several capitulations of Quebec, Florida, and Granada, (which are the colonies in question,) so as to inform the learned lawyers, who were to answer it, what rights the inhabitants of those countries were intitled to on that most important ground; nor does it state the treaty of peace, or the king's proclamation of October 1763, nor his Majesty's commissions of governour of those several colonies to the first governours he sent thither; all which are instruments of a high nature, and determine the laws and constitutions of the places to which they relate. The answers, therefore, that are given to a case so imperfectly, so wretchedly stated, cannot be intitled to much regard, let the learning and abilities of the gentlemen who give them, be ever so great: because they are answers to a fictitious case, which differs from those which really exist. The case which that query seems to have had in view is this: "*Whether, if Canada, Florida, and Granada, had been conquered without any articles of capitulation, and ceded by the treaty of peace without any stipulation in it concerning the toleration of the Roman-Catholick religion; and if his Majesty had as yet made no proclamation concerning them, and had issued no*  
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*commission to any civil governour of them, erecting and constituting a form of government and system of laws for the said governour's direction; whether, in this case, there would be any general maxim of the English law and government, by the operation of which the Roman-Catholick inhabitants of those colonies would become subject to the incapacities, disabilities, and penalties to which Roman-Catholicks in this kingdom are subject by the laws thereof." This, it is plain, is a quite different case from the real case of either Canada, Florida, or Granada, in the year 1765, when the afore-said query was proposed to, and answered by, the great lawyers above-mentioned.*

The answer given by those gentlemen to the case proposed to them, (which I conceive them to have understood in the manner I have just now stated it, without any consideration of the capitulation, treaty of peace, or proclamation; because, in their answer to it, they don't say a word of either of those instruments;) is, *that the Roman-Catholick inhabitants of the said colonies were not subject to the said incapacities, disabilities, and penalties."* Now, this answer is certainly true with respect to the case stated for their opinion, so far as it regards the *penalties and disabilities*, to which Roman-Catholicks are subject in England for publickly exercising the worship of their religion: because the sta-

tutes imposing these penalties do not, *proprio vigore*, or by their own force and operation, extend beyond the bounds of England; and consequently, unless they have been introduced into Canada, and other new provinces, by some positive act of his Majesty's authority, they cannot be in force there. But, I cannot conceive this answer to be true with respect to the incapacity of Roman-Catholics to hold either ecclesiastical benefices, or temporal offices of trust and profit, arising (not from their exercising the worship of their religion, but) from their refusal to take the oath of supremacy. This incapacity, I apprehend, extends to Roman-Catholics in those new dominions as much as to Roman-Catholics in England itself; because the statute of the 1st of queen Elizabeth, by which all persons, who shall hold any such benefices or offices, are required to take the oath of supremacy, extends expressly to all the dominions of the crown, that then were, or *thereafter should be*, as we have seen in the *Account of the Proceedings*, &c. page 186. This extension of the statute of supremacy to all the future dominions of the crown, seems to have escaped these learned gentlemen, whose attention seems to have been principally directed to the statutes inflicting penalties and disabilities on popish recusants, and popish recusants convict, which do not, of themselves, extend beyond England.

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With this distinction between penalties and disabilities, arising from the exercise of the worship of the Romish religion, on the one hand, and an incapacity of holding either ecclesiastical benefices or temporal places of trust and profit, arising from the refusal to take an oath of supremacy, on the other hand, I conceive the said opinion of those two learned gentlemen to be also true in the *real case* of the province of Quebeck, as well as in the inaccurate and imaginary case that was proposed to them: because neither the reference to the laws of England in the fourth article of the treaty of peace, in these words, *so far as the law of Great-Britain will permit*, nor the introduction of the general body of the English laws into the province by the king's proclamation of October 1763, and by the commission of Governour Murray, and the principal ordinances made in consequence of them, ought, in a fair and liberal construction, to be supposed to have introduced into the province the penal statutes against Roman-Catholicks, which inflict those penalties and disabilities, they being inconsistent with the toleration of the worship of the Romish religion, that is granted to the Canadians in the capitulation and treaty of peace. Since, therefore, these penal statutes do not, by their own operation, extend to any place out of England, and ought not to be supposed to have been introduced into the province

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vince by the subsequent instruments of government relating to it, to wit, the treaty of peace, the proclamation, the governour's commission, and the provincial ordinances, made in consequence of them, it follows that they were not of force in the province in the year 1765. But these reasons do not relate to the incapacity to hold ecclesiastical benefices or temporal places of trust and profit in the province without taking the oath of supremacy, which is grounded on the universal statute above-mentioned, of the 1st of queen Elizabeth, and which is by no means inconsistent with the toleration of the worship of the Roman catholick religion in the province, any more than the like incapacity to hold places of trust and profit and ecclesiastical benefices, without taking the sacrament, according to the ceremonies of the church of England, and subscribing the 39 articles, is inconsistent with the toleration of the worship of protestant dissenters here in England.

This first query proposed to those two great lawyers, and their answer to it, say nothing about the right of the priests in Canada to their tythes. The report of the advocate, attorney, and solicitor general to the privy-council upon the propositions of the board of trade, in January 1768, as stated in the pamphlet above-mentioned, consists of two propositions. The first proposition is in these words ;

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words; "*That the several acts of parliament which impose disabilities and penalties upon the publick exercise of the Roman-Catholick religion do not extend to Canada.*" This I readily allow. But it does not prove that the incapacity to hold ecclesiastical benefices and temporal places of trust and profit without taking the oath of supremacy, created by the aforefaid statute of the 1st of Queen Elizabeth, does not extend to Canada. For this is not a penalty or disability imposed by any act of parliament upon the publick exercise of the Roman-Catholick religion; but exists independently of any such publick exercise, and is built upon quite another ground, to wit, the incompleatness of the fidelity, or loyalty, of those persons who acknowledge the foreign jurisdiction of the bishop of Rome, and the danger of trusting them with power.

The second proposition in this extract from that report of these law-officers, is in these words; "*and that his Majesty is not by his prerogative enabled to abolish the dean and chapter of Quebeck, nor to exempt the protestant inhabitants from paying tythes to the persons legally intitled to demand them from the Roman-Catholicks.*" From this opinion one would be led to suppose that these gentlemen had not been desired to consider, *whether, or no, the Romish priests were legally intitled to demand the tythes from the Roman-Catholick inhabitants of the province; but that*

both

both they and those who asked their opinion, had taken it for granted that the said priests were intitled to do so; and that the only matter of doubt, concerning which the opinion of those learned gentlemen was required, was, whether, if the priests were still intitled to demand the tythes, the king, by his prerogative alone, could exempt the protestants from paying them. To this question (which seems to have been the only one under their consideration,) they answer, *that the king could not exempt the protestants from paying the priests their tythes*; which I readily admit to be true. But still the main question remains to be considered, which is, *whether the Romish priests in Canada could, without taking the oath of supremacy, hold any ecclesiastical benefices, and legally demand the payment of tythes from any of the inhabitants of the province, whether Protestants or Roman-Catholicks*: and this question seems not to have engaged the attention either of the learned gentlemen who made this report, or of those who required them to make it; but it seems rather to have been taken for granted by them all, that the said priests could legally demand the tythes. This, it may be said, is a proof that those learned gentlemen were of opinion, that the priests in Canada had a right to demand their tythes. And I confess it is so. But I contend that it is only a hasty opinion upon a point not proposed to their consideration, and not a deliberate opinion upon a point expressly laid before

fore them for their examination, and stated in a proper manner. It seems to have arisen from a want of attention to the articles of the capitulation, and the treaty of peace, and the grand, universal, statute above-mentioned, of the 1st of Queen Elizabeth, concerning the Royal Supremacy, which is referred to in the treaty of peace, and is acknowledged to be so referred to even in the late Quebeck-act, by which so much favour is shewn to the Roman-Catholick religion.

Having thus examined this opinion and report of the law-officers of the crown, and shewn how little stress is to be laid upon them with respect either to the right of the Romish priests of Canada to demand the tythes, or to the capacity of Roman-Catholicks of any kind, (or of any other persons who refuse to take the oath of supremacy,) to hold places of trust and profit, I shall now proceed to answer the triumphant questions asked by the writer of the said pamphlet, *The Justice and Policy, &c.* in the passage herein above cited from the said pamphlet.

His first question, or rather groupe of questions, is in these words: " Under what colour, " or pretence, then (let me ask the oppugners " of the late act of parliament) is it that the " Canadians ought to have been deprived of all " share in the civil offices of the province? ---

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“ that their clergy should be stripped of their  
 “ maintenance ? --- and the whole people made  
 “ subject to laws enacted by an assembly, from  
 “ which they were to be excluded, and in the  
 “ election of whose members they were to be  
 “ deprived of all share ? ”

*Answer.* They were to have been excluded from civil offices, not as Canadians, but as Roman-Catholicks, who refuse to take the oath of supremacy ; even as Roman-Catholick Englishmen and Irishmen are excluded from civil offices in England and Ireland on the same account. And this exclusion is under colour, or pretence, or (to speak more correctly) by virtue, of the grand, fundamental, universal statute of the 1st of queen Elizabeth above-mentioned, for abolishing all foreign jurisdiction, and establishing the supremacy of the crown.

Secondly, Their clergy were not to be stripped of their maintenance. For they had had no legal right to their tythes ever since the surrender of the country to General Amherst in September 1760 ; partly by reason of his suspension of that legal right till the king's pleasure should be declared concerning it, and the want of any declaration thereof before the passing of the late Quebeck-act ; and partly by virtue of the above-mentioned statute of the 1st of queen Elizabeth, which requires



requires that all persons, who hold ecclesiastical benefices, shall take the oath of supremacy.

Add to this, that the bulk of the people in Canada were very well pleased with the exemption from the legal obligation, under which they had formerly lain, of paying the priests their tythes: but that they nevertheless, for the most part, paid them voluntarily, and that few or no complaints were made against them upon this account.

Thirdly, The English inhabitants always proposed and wished, that the Roman-Catholics in the province should be permitted, equally with the protestant inhabitants of it, to vote at the election of members of the assembly, though not to be elected into it; so that the whole Canadian people would not have been made subject to laws enacted by an assembly, in the election of whose members they were to be deprived of all share, as the writer of that pamphlet supposes, but to laws made by an assembly of their own chusing. And the English inhabitants of the province even declared themselves willing to acquiesce in an assembly into which the Roman-Catholics should be admitted to sit as members, if his Majesty in his royal wisdom should think fit to constitute the assembly in that manner.

The afore-said writer then asks another question in these words: " Upon what ground  
 " or pretence is it asserted that a clause which  
 " expressly takes away from the parish-priests  
 " their legal right to tythes of the lands held  
 " by protestants, and which our great crown-  
 " lawyers declared, the king could not de-  
 " prive them of by his prerogative, can be  
 " said to establish popery, and grant only a  
 " precarious toleration to the church of Eng-  
 " land?"

*Answer.* This is asserted, because the Ro-  
 mish priests in Canada had no legal right to  
 the tythes from either the protestants or the  
 Roman-Catholicks in the province before the  
 late Quebeck-act, for the reasons already men-  
 tioned; so that, by that act, they do not lose  
 their legal right to the tythes of the protestant  
 inhabitants, as the question supposes, but ac-  
 quire a legal right to the tythes of the Ro-  
 man-Catholick inhabitants, which they had  
 not before enjoyed ever since the conquest of the  
 province in 1760. This revival of their legal  
 right to the tythes of their popish parishioners  
 is making a provision by publick authority for  
 the teachers of the Romish religion, which  
 may well be called, *establishing* that religion.

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Before I quit this subject of the revival of the legal right of the Romish priests to their tithes by the late act of parliament, I cannot but express my surprize at the expectations which I have observed many people to have entertained, that this measure would have given great satisfaction to the Canadians, whereas in truth it has had the contrary effect of greatly displeasing them, as those who knew the province foresaw it would do. If, indeed, their religion had been only connived at before the passing of that act, and the several laws of England inflicting penalties and disabilities on those persons who should publicly exercise it, had been supposed to be in force in the province, and to be only suspended, or laid aside for a time, by the prudence and humanity of the government of the province for the time being, the changes made by the *Quebeck-act*, with respect to their religion would, probably, have been considered by them as a great improvement of their condition. But their condition with respect to their religion before the *Quebeck-act* was so good and so agreeable to them, that it was impossible to make it better. Their religion was not connived at, but legally tolerated, and *that* in the most ample manner possible: and they knew that it was so. The *penal laws* of England were universally understood throughout the province to have never been of force in it, but to have been excepted from the general introduction of the rest of the

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the laws of England, by the toleration granted them by the capitulation and treaty of peace; so that they were under no sort of uneasiness upon that account. And, as to the *disqualifying laws* of England, by which papists were excluded from places of trust and profit, (which were indeed understood to be of force in the province,) they so little affected the body of the Canadian people that they hardly ever thought about them. They themselves, they knew, could have had no chance, or thought, of being advanced to those places, if their incapacity, as Roman-Catholicks, had been removed: and they had no sort of inclination to see their own noblesse and other former superiours, advanced to them; but, on the contrary, (by all the accounts that I could ever learn of their sentiments,) were much better pleased to see those gentlemen continue in a private station, and to have the offices of Judges and Justices of the peace, and other offices of power, filled by Englishmen. Being thus indifferent about the *disqualifying laws* (which, it must be remembered, were not extended to jurymen on either grand or petty juries, nor to attornies, notaries, or advocates, all of whom were permitted to follow their professions in the same manner as if they had been protestants,) I say, being thus indifferent about the *disqualifying laws* of England, and thus free from all apprehension of the *penal laws* of England, which no mortal in the province had

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ever supposed to be in force there; --- and being also in full possession of all the churches and chapels in the province, with their priests regularly officiating in them in the manner used in the time of the French government, but with a liberty of paying them their tythes, or letting it alone, as they thought proper; --- how can it be supposed, that the mere change of this agreeable liberty, by the late act of parliament, into a compulsive obligation to pay the tythes to their priests, how much soever they might be dissatisfied with their behaviour, should be considered by them as an advantage and a favour? The priests, indeed, and some few laymen of the upper classes, who are more than ordinarily attached to the Romish religion, and who, looking forwards into futurity, are anxiously desirous, that it should continue to be the prevailing, or the only, religion in the province, may, perhaps, be pleased with this clause of the late act, which revives the compulsion upon the people to pay the priests their tythes, on account of its tendency to perpetuate that religion in the province. But the common run of the Canadian peasantry, (who are the great body of the people of the province,) do not speculate so deeply and so anxiously; and, accordingly, they both were, and were likely to be, better pleased with the liberty they enjoyed in this respect before the late act, than with the compulsion under which they are again laid by this clause of it. I have sometimes thought,

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that this matter might be illustrated (since people so much mistake it as to make such an illustration necessary ; ) by the supposition of a similar proceeding here in England within our own view. Let us then suppose, for a moment, by an effort of our imagination, that our bishops could be brought to consent to a free toleration of the worship of the protestant dissenters here in England. It would, in the opinion of many people, do their Lordships honour, and would certainly be a favour which that loyal and respectable body of people would highly value. For they would then be in the same happy and easy condition, with respect to their religious liberty, that the Canadians have been in ever since the surrender of that province to the British arms. A greater degree of liberty could not be given them. But, let us next suppose, that their Lordships, in the warmth of their new kindness to these hitherto obnoxious people, were to go a step further, and to consent to a law that should enact, that every presbyterian layman that frequented a meeting-house, should be forced to continue to the minister of it the payment of his last annual subscription, whether he would or no, and whether he had reason to be satisfied with the conduct of his minister or otherwise. I imagine, that the bulk of the presbyterian laity (whatever a few very zealous men amongst them might do,) would hardly take this second provision as a favour, but would rather be of  
 opinion,

opinion, that their Lordships had, in that instance, been over-zealous for the support of a mode of worship which they did not themselves approve. And the same, we may suppose, will be the sentiments of the generality of the popish laity of Canada, with respect to the compulsive clause for the payment of tythes in the late act of parliament. And, indeed, it is now said, that such *are* the sentiments of many of them.

An Account of the Sentiments of the  
Canadians concerning the Intro-  
duction of the English Laws, and  
the Trial by Jury, into the Pro-  
vince.

WHEN I resided in the province of Quebeck, I inquired, as carefully as I could, into the causes of the complaints that had been made in the province, concerning the state of the laws, and the administration of justice in it. And I found, that the greater part of these complaints related neither to the introduction of the laws of England into the province in the room of the French laws, nor to the English method of trying doubtful facts by a jury instead of leaving them to the decision of the judges, but almost intirely to the expence and the delays in the administration of justice since the estab-

blishment of the civil government in the province. These expences and delays have been since remedied by an ordinance of the Governour and Council of the province, passed in the month of February 1770, by which the courts of Common-pleas have been directed to sit every week in the year, (with a very few intervals, at particular seasons) for the administration of justice in civil matters; and the process of imprisonment for debt (which before was used in all cases where the debt amounted to forty shillings) has been restrained to the cases of debts of twelve pounds; and the too hasty sale of the freehold lands of debtors for the payment of their debts has been prevented. In these courts the French lawyers plead in their own manner, and for very moderate fees; so that these objections to the expence and delays of law-proceedings have been removed as far as, perhaps, it is possible to remove them. As to the English laws themselves, which had been introduced into the province, they had occasioned no inconveniences at all in the province, so far as they had been felt and experienced by the decisions of the courts of justice. But it must be confessed, that the English laws of inheritance, and other English laws relating to landed property, would, if they had been appealed to by the Canadians in opposition to their own customs upon those subjects, and enforced by the authority of the courts of Justice (as, perhaps,

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haps, they must have been, if such matters had been brought before the courts) have occasioned great uneasiness and confusion. This the English inhabitants of the province are sensible of, and therefore have always declared, that they wished the French laws upon those subjects to be continued, or revived; and more especially with respect to the children of marriages already contracted. But I am persuaded that the revival of the French laws upon this subject only, (landed property) would be sufficient to preserve the province from falling into any confusion and discontent, tho' the laws of England should be introduced into it, or rather continued in it, upon all other subjects. And I am confirmed in this opinion by the letter published in the *Account of the Proceedings, &c.* signed *Le Canadien Patriote*, which, (tho' it was written for the express purpose of indisposing the Canadians against the laws of England, and persuading them to be pleased with the revival of the French laws in all civil matters by the late Quebec act,) yet mentions nothing but the English rate of tythes, (to wit, the tenth sheaf of corn, instead of the twenty-sixth bushell, which was the tythe paid in Canada,) as matters that they were likely to be displeased with. This latter law of England, about tythes, nobody dreamt of introducing into the province; and the former, about inheritance by primogeniture, the English declared, they were willing to have expressly excluded, and the French

law upon that head expressly revived in the province, if the Canadians should desire it. Since, therefore, this ingenious writer can find nothing else to object to, in the laws of England, we may safely conclude, that those laws might have been continued in the province (with the above-mentioned exception, with respect to landed property, and leaving the payment of tythes to the free choice of the inhabitants) without giving any disgust to the Canadians.

As to the trial by Jury, the novelty of it, when it was first introduced into the province, occasioned various reflections upon it amongst the Canadians. Some of them said, it was a strange thing to refer the decision of law-suits to a set of tradesmen, or, (as sometimes was the case,) of ignorant mechanicks, some of whom could neither write nor read, when the king employed and paid learned judges to decide them. These persons misconceived the province of a jury, and supposed that they were appointed to try matters of law as well as matters of fact; though the former are clearly without their jurisdiction, and cannot, even by the consent of the parties, be ever referred to their determination, except where they are so blended with the latter, (which sometimes happens) as to appear under the form of the latter, that is, to appear to be matters of fact. Others of the Canadians observed that it was a strange thing, and a hard one,

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one, to force twelve persons, who really think differently upon a doubtful matter, that is referred to their determination, to say, upon their oaths, that they are all of the same opinion, and to continue to be shut up together without food or light, till they do say so. This, they said, was putting the decision of causes into the power of those jurymen who had the strongest constitutions, and could go longest without food. And it was also forcing some of them to break their oath, and commit a kind of necessary perjury, by acceding to the opinion of their brother jurymen, when they really entertained a contrary opinion. These reflections were made upon the unanimity required amongst jurymen in delivering their verdict. And, I must confess, I think these reflections just: insomuch that I am convinced that this unanimity could never have been required in the original institution of juries, but must have grown up from some accidental and collateral cause in the practice of this mode of trial; as, for example, from the unwilligness of judges to take the trouble of adding a number of fresh jurymen to the first twelve, where they could not agree in their verdict, and causing the evidence, that had been before given in the cause before the first twelve jurymen, to be repeated over again by the witnesses to the additional jurymen, till a verdict was obtained in which twelve, at least, out of the whole number of jurymen, were really unanimous. For this was

was the way of proceeding in this matter in the days of king Henry the third, that is, about the year 1260, (or about four-score years after the first institution of juries by king Henry the second,) as appears by the following passage in the famous lawyer, Bracton, where he treats of the issue of *Non disseisvrit*, in a writ of *Novel disseisin*, which appears to have been at that time a very common action. *Contingit etiam multotiens quod juratores in veritate dicendâ sunt sibi contrarii, ita quod in unam declinare non possunt sententiam. Quo casu, de consilio curiæ, affortietur assisa [that is, the assise, or jury, shall be re-inforced, or increased,] ita quod apponantur alii juxta numerum majoris partis quæ dissenserit, vel saltem quatuor vel sex, et adjungantur aliis; vel etiam per se ipsos, sine aliis, de veritate discutiant et judicent et per se respondeant: et eorum veredictum allocabitur et tenebit, cum quibus ipsi convenerint.* That is, It often happens that jurymen, when they come to deliver their verdict, appear to be of different opinions, so that they cannot bring in an unanimous verdict. In these cases, the court must order the (assise or) jury to be [re-inforced or] increased by the addition of as many new members as there are in the majority of the jury who already agree in one opinion and differ from the minority, or at least by the addition of four or six new members. And these additional members of the jury shall join with the former jurymen

men in considering and debating the matter in question. Or they may, if the court shall so direct, consider and debate the matter by themselves, without any such conjunction with the original jurymen, and give their answer, concerning the matter in dispute, separately by themselves. And the verdict of those members of the original jury with whom these new jurymen shall agree in opinion, shall be allowed and hold good. See Bracton *de Legibus & Consuetudinibus Angliæ*, lib. 4. cap. 19. *de Assisâ novæ disseisinæ*, folio 185. page 2. Others of the Canadians complained of the hardship of being forced to attend upon juries, which took them from their business without any profit or compensation for their trouble. Yet, notwithstanding these reflections, which were made by a few persons upon the first introduction of so new a mode of trial, it may be truly said, upon the whole, that the Canadians were very well satisfied with the trial by jury, and had begun to be sensible of its advantages. For in the court of Common-pleas, (which General Murray had instituted, chiefly with a view to give the Canadians satisfaction, and in which he had permitted French lawyers to plead in the French language, and according to their own forms and manner of pleading, and in which he had permitted the parties to have their causes decided either with or without a jury, as they liked best,) it was most usual for the Canadians who were engaged in law-suits, either

either with the British inhabitants of the province, or with each other, whenever the matter in dispute was of considerable value, (as, for instance, worth 40 or 50 pounds sterling,) to desire to have it tried by a Jury. This was testified before the House of Commons at the time of passing the Quebeck bill, by Mr. Edward Watts, who had resided at Quebeck as principal clerk to an eminent merchant there during several years, and Mr. Samuel Morin, who had been vendue-master, or licensed auctioneer, at Quebeck, for many years; and they both declared, that they had often been themselves impannelled, and had served as jurymen in the court of Common-pleas at Quebeck, in consequence of the desire of the parties, and those often Canadians, to have their cause tried by a jury, when they might, if they had pleased, have had it determined by the judges only. And I well remember to have hear'd mention made of many remarkable causes that were tried in that court, in which the parties had desired to have a jury. And once I was concerned, as counsel, in a cause in that court, between two Canadians at Montreal, which was tried before a jury, and, if I remember right, before a special jury: for they often chose to have a special jury, notwithstanding the expence that attended it. And I well remember, that they used frequently in conversation to express a satisfaction in the thought that they could have their causes determined by a jury, instead of being left wholly

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wholly to the judges, whom (though they did not suspect them of bribery, or other positive dishonesty, they being men of fair characters,) they would often suppose to be under an undue bias and influence towards the other party, either from some connection of friendship with him, or from too great a deference to the opinion of some favourite lawyer, or of some other person who was not at the bar, but who was thought to be skilled in matters of law, whom they privately consulted, and by whom it was supposed that they let themselves be governed. Now it appears to me, that the conduct of those Canadians who were concerned in law-suits, and their inclination to have their causes determined by juries, instead of being left to the sole determination of the judges, is a much stronger and more respectable proof, that that mode of trial was agreeable to the inclinations of the Canadians, than the light observations thrown out in common conversation by such of the Canadians as were not concerned in law-suits, (and who consequently had not paid so much attention to the subject,) against that mode of trial, (or rather against either its imperfections, or the inconveniences attending it,) were of their dislike to it. For *that* may be reckoned to be, upon the whole, agreeable to a people, which those of them who have any concern with it, chuse voluntarily to do, when they might, if they pleased, avoid it. I therefore think it may safely be affirmed, that the

trial by jury was, in the year 1774, after ten years experience of it, agreeable to the generality of the Canadian people: and I believe, that it would be still more agreeable to them, if the persons impannelled upon juries were to be paid a small sum of money for their attendance, (as, for instance, five shillings sterling,) and if they were not required to be, or rather to pretend to be, unanimous in delivering their verdict. And for this reason, I think, the institution of juries should be amended in those two particulars in the province of Quebeck, to make it more suitable to their inclinations and opinions. And I likewise think, that measures should be taken to separate the law in every law-suit, or, at least, whenever either of the parties desired it, from the facts as carefully as possible, so that the jurymen should see plainly that they have nothing but facts to determine, and should also see what the facts were which they were required to determine: by which means the first objection abovementioned to have been made by some of the Canadians against the trial by jury, to wit, that it takes the decision of matters of law out of the hands of the king's learned judges, and transfers it to a set of ignorant jurymen, would be intirely removed. And for this reason I have endeavoured in the following plan for the administration of justice in that province, (which was drawn up about January 1769, and presented to Lord Hillsborough about April 1770, and upon which

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which I bestowed a great deal of thought and pains,) to provide remedies for these inconveniencies by suggesting, 1st, That juries should be had in civil matters, whenever both or either of the parties desired it; which, I believe, would be in almost every cause of 30 or 40l. value, that turned upon nice and doubtful facts; and 2dly, That they should consist of thirteen persons, and that the majority of them should carry the verdict, after they had been confined together for a certain number of hours, (as, for example, 24 hours) in order to procure, if possible, a real unanimity among them, grounded upon a full discussion and deliberation upon the evidence; and 3dly, That they should be paid five shillings a piece for their attendance; which money should be paid to them by both the parties, if they both desired to have a jury, or, if only one of the parties desired to have a jury, by the party which desired to have one; and 4thly, That the issues, or contested matters of fact, proposed to them for their determination, should be *special* issues, that is, simple, plain, distinct matters of fact, intirely separated from matters of law, and concerning the meaning of which there could not be the least doubt; and that these issues should be drawn up by the assistance and direction of the judges, and grounded on interrogatories exhibited to the parties by their order, with a view to discover precisely in what points of fact the parties

agreed, and in what other points they differed from each other. How far this last object of procuring the issues, or facts, to be stated specially under the direction of the judges, is attainable in practice, I will not pretend to say. But, I am sure, it is worth endeavouring at, not only for the reason already suggested, to wit, that juries may be confined to the discharge of their proper duty, (which is the decision of mere matters of fact,) without encroaching on the province of the judges and determining points of law, but also to avoid the great obscurity and confusion which has hitherto prevailed in the pleadings of the causes in the courts of Common-pleas in the province, which is sometimes so great as to render them altogether unintelligible. This requires farther explanation.

For the sake of such of my readers as are not acquainted with the law, I shall observe, that by the word, *pleadings*, on this occasion they are not to understand the speeches made by the advocates, or counsel, at the bar before the judges in support of their clients causes, but the altercation carried on by the adverse parties in writing, containing, first, The *plaint*, or *demand*, or *declaration* of the plaintiff; (for it is called by all these different names on different occasions,) in which the plaintiff sets forth the whole ground of his action, and shews wherein he has been injured by the defendant, and what

what redress he desires to obtain from the court; and 2dly, The answer of the defendant to the plaintiff's claim, or complaint, which is called in the English law the defendant's *Plea*, and in the French law *la réponse*; and, 3dly, The reply of the plaintiff to the defendant's plea, or answer, which is called in the English law the plaintiff's *replication*; and 4thly, The defendant's second answer, or reply to the plaintiff's reply; which second answer is called in the English law the defendant's *Rejoinder* to the replication of the plaintiff. And thus the altercation, or dialogue, between the adverse parties is carried on till it is brought to some one, or more, short, distinct, propositions, either of law or fact, which the one party positively affirms, and the other as positively denies. These short points, to which the dispute is thus ultimately brought, are, in the English law, called *Issues*: if they are points of law, they are called *issues in law*; if they are points of fact, they are called *issues in fact*, or simply, *issues*, (for the word *issues*, when used by itself, always means *issues in fact*;) and the reason, why these short points are called *issues*, (or in Latin, *exitus*,) is because they come, or arise, out of (in Latin, *exeunt*,) or result from the mutual allegations of the parties in opposition to each other. In this stage of a law-suit, the English law directs the judges of the court before whom it is brought, if the *issues* joined by the parties, are *issues in fact*, to order the sheriff

sheriff of the county to summon a jury of twelve free, honest, and impartial men to come and determine them upon their oaths ; but, if the issues, joined by the parties, are mere matters of law, it directs the judges to consider them carefully and maturely by themselves, without a jury, and, after such due deliberation, to give judgement concerning them. This is the course of the English law. The French law directs, that both issues in fact and issues in law shall be determined by the judges only.

Now it is evidently necessary to the right understanding the nature and merits of the suits that are contested in courts of justice, and consequently to the just determination of them; that these pleadings, as they are called, should be carried on in a clear and methodical manner ; and this, whether the law, by which the cause is to be tried, be the English law, or the French law, or any other law whatsoever. But experience has shewn, that, to draw up these pleadings, or states of the pretensions of the contending parties, in a clear and proper manner, is a matter of considerable difficulty, and requires more than a common share of precision in relating facts, and accuracy in reasoning upon them : insomuch that many persons, who can speak fluently and elegantly upon a subject, and thereby acquit themselves plausibly as advocates at the bar, are incapable of conducting this part of their clients business. This re-  
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mark I believe to be true in all countries, and according to all systems of law: because nature has not endowed every man with a clear and logical understanding; which is a qualification essentially necessary to the management of this business. But it is more especially true in the English law, where the art of drawing these pleadings is reduced to certain technical rules, and is distinguished as a particular science, or art, called *Special Pleading*, which forms a separate branch of the study and practice of the law, and is known only to a very few lawyers. It is, indeed, to be lamented that it is not any where explained in a full and clear manner, so as to be easily attainable by all those persons who have by nature a capacity to understand it, and are willing to bestow a moderate degree of application in acquiring the knowledge of it; because of its great utility in the conduct of law-business. But the fact is as I have stated it: this science is, in the English law, a mystery known to but a few persons. It is, therefore, almost certain, that the English lawyers, who are likely to go and settle in the province of Quebec, if the English law were to be thoroughly established there, would be some of those who are unacquainted with this branch of law-learning; because none of the more learned and accomplished English lawyers, that understand this useful part of the law, can ever be supposed to be willing to leave the lucrative practice which they

they will probably obtain in England, or their reasonable hopes of obtaining such practice, to go and practice the law in so poor a country as that province. And, if the English lawyers, that will settle in the province of Quebeck, cannot be supposed to be likely to understand this science, much less can it be imagined that the French attornies and advocates, who practice the law in that province, (and who ought, for the satisfaction of the Canadians, to be permitted to continue to practice the law there,) will ever be able to acquire the knowledge of it. It may, therefore, be concluded, that the pleadings in the law-suits in the province of Quebeck will never be drawn up skilfully according to the rules of special pleading observed in the English law.

But, perhaps, it may be thought, that an imperfect observation of those rules may suffice for the conduct of business in that province in a manner that may answer the main purposes of justice tolerably well: and that *in that imperfect degree* the most ordinary lawyers are capable of observing the rules of pleading, by following the precedents of declarations, and pleas, and replications, and other pleadings, set forth in printed books of Entries, such as Lilly's Entries, or Mallory's Entries, and the like. I can hardly assent to this opinion, because I conceive it to be impossible in many cases for a person, who does not understand the

the subject, to make a right use of those precedents, and to avoid, every now and then, mistaking one case for another, that bears some resemblance to the former, but yet differs from it in some essential circumstance. But, if we should admit, that this imperfect degree of knowledge in the art of pleading would be sufficient for common purposes, and to prevent great confusion in law-business, yet even this degree of knowledge of it is unattainable by the French lawyers in the province, (by whom great part of the law-business in it is transacted,) or, at least, is not likely to be attained by them: so that one may conclude, upon the whole, that it is impossible that the principal part of the law-business of the province can be carried on according to the forms and rules of pleading observed in the English law, even in an imperfect degree.

And it has appeared in fact, that, even in the court of King's-bench in the province, (which before the late Quebeck-act was intirely governed by the rules of the English law, in the forms and manner of pleading as well as in the decision of the points in litigation,) the rules of good pleading were very imperfectly observed, by reason of want of skill in the English lawyers who practised in it, (as I am sure they will all readily allow); and considerable difficulties and perplexities have occurred in causes whenever the defendant's

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counsel thought fit to make a special plea to the plaintiff's declaration: and the record, or the whole collection of the pleadings, has, on these occasions, been rather obscure and difficult to understand; though in the common run of causes, where the general issue has been pleaded, the pleadings in this court have been, for the most part, tolerably clear and intelligible. But this court, (though it was the supreme court of the province, and was held before Mr. Hey, the chief Justice of the province, a man of confessedly superiour knowledge and abilities to any of the other judges in it, or to all of them put together,) transacted very little of the civil business of the province. This was not owing to any want of confidence in the chief Justice, or in the English lawyers who practised in that court, but chiefly to the custom, which was observed in it, of drawing up all the pleadings, in the suits that were brought in it, in the English language, and of speaking at the bar to the merits of them likewise in the same language, and partly to the greater expence which attended the prosecution of causes in this court, than in the courts of Common-pleas. The French clients were glad to be able to hear their causes spoke to in open court in their own language; and some of them were also desirous of seeing and understanding the written pleadings in them, before they were delivered in to the court: and many of them were, for several years after  
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the conquest of the province, desirous of employing French lawyers in the management of them; though of late years several of the French inhabitants of Quebeck have thought fit very often to employ two English lawyers of good character, Mr. Kneller, (the present attorney-general of the province,) and Mr. Williams, in their causes in the court of Common-pleas there, even in preference to their own countrymen. And both English and French clients were glad to have their causes managed at as small an expence as possible, and on that ground gave the courts of Common-pleas in the province a preference to the court of King's-bench. Add to this, that ever since the ordinance already mentioned to have been published in the month of February, or March, 1770, for further regulating the proceedings of the courts of Justice, the courts of Common-pleas for the two districts of Quebeck and Montreal have sat every week in the year, (with a few exceptions,) whereas the court of King's-bench has sat only (as it did before that ordinance,) during three terms in the year at Quebeck, and during two terms in the year at Montreal. This greater frequency of the sessions of the courts of Common-pleas in the province, and the expeditious attainment of the ends of the suits brought in them, which was the necessary consequence of it, concurred with the other causes above-mentioned, in making those courts become

the ordinary courts for civil business in the province, to the almost total neglect of the court of King's-bench of late years, with respect to that branch of its jurisdiction, except only upon appeals from decisions in the courts of Common-pleas, which were still permitted to be made to it, after the said ordinance of February 1770, as well as before it. The courts of Common-pleas, therefore, have been the efficient courts in the province for the decision of civil suits in it, for many years past: and consequently the manner of drawing the pleadings in these courts, and not that of drawing those in the court of King's-bench in the province, (which is so little resorted to) is what we ought to consider as of most importance to the province, and most worthy of being brought to some tolerable degree of order and precision. Now, if it had been found by experience, that the pleadings in these courts of Common-pleas were tolerably clear and precise, so that the Judges who tried the causes, and also the chief Justice, or other Judges, who were to decide the appeals from them, could clearly understand what was the matter in dispute, the ends of law and justice would be obtained, and it would be a matter of perfect indifference, whether the form and manner of drawing these pleadings agreed with that observed in the English law, or with that observed in the French law, or in any other law, or not. But the fact is well known  
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to be otherwise, by all those who are conversant with the law-proceedings in that province. For the pleadings in the courts of Common-pleas, at least at Quebec, (for I know less of those at Montreal,) are often drawn up in so wild, and irregular, and confused a manner, that it is impossible to find out from them, what is the matter really in dispute between the parties, and upon what grounds they support their respective claims. This has been a misfortune universally observed and lamented, and which all persons, conversant with law-proceedings, have wished to see either removed or lessened, if any method of doing so can be contrived. I speak with hesitation upon this subject, because it is a matter of nicety and difficulty, and by no means easy to be remedied. Now, it is principally with a view to remedy this inconvenience that I have proposed, in the following plan for the administration of justice in that province, that the Judges, after perusing the plaintiff's declaration, and the defendant's plea, should exhibit interrogatories to them, concerning the facts which should appear to them (the Judges) to be doubtfully or obscurely stated in the pleadings, and which they should judge to be material to the decision of the cause. This appeared to me the simplest and easiest method; — I might indeed say, the only one, that was practicable in that country; — of bringing the matters in dispute between the parties fully and clearly before the court, so that the fates, in which they agreed, should be

be clearly distinguished from those in which they differed, and the grounds upon which they built their respective pretensions might be made apparent. And at the same time it must be observed, that the referring to the determination of the jury the truth of those several distinct facts, in which the parties, in their answers to the said interrogatories, were found to contradict each other, would be attended with this further advantage, that it would enable the jury to know distinctly what facts they were required to ascertain, and would prevent them from going astray from their proper business, either to inquire into unnecessary, or immaterial facts, or to determine points of law. These were some of the principal objects I had in view in drawing up the said plan for the administration of justice in the said province. As to the number of courts in the said province, the extent of their respective jurisdictions, and the provision that they should hold their sessions every week in the year, with only a few necessary exceptions; all these particulars were settled after the model of the courts of justice that were established in the province in the time of the French government, which in all those respects were, as I believe, extremely well suited to the purposes of administering justice in it with convenience and dispatch, and fitted to give satisfaction to the Canadians. This plan for the administration of Justice in that province, is as follows :

Plan

Plan of a convenient Method of administering Justice in the Province of Quebeck in North-America.

IT is conceived that the following method of administering justice would be that which would best suit the circumstances of the province of Quebeck and the temper of its inhabitants, and be upon the whole the fittest of any to be carried into execution there, being nearly the same with that which took place there in the time of the French government.

In the first place, it would be proper to divide the province again into the three districts of Quebeck, Three Rivers, and Montreal, as in the time of the French government ; and to call them shires, which is the name of the districts into which England is divided ; and to appoint a separate ministerial, or executive officer of justice to each of these shires or districts, to be called, as in England, the sheriff of the shire, instead of having an officer of this kind, called a provost-marshal, for the whole province, as is now the case.

In each of these shires, or districts, there should be a separate royal court of judicature, which should hold its session in the chief, or rather

The province should be divided into three districts, or shires.

Each shire should have a separate sheriff.

A separate royal court of judicature should be erected in each district, or shire ;

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rather the only town, in the district; for the towns of Quebeck, Three Rivers, and Montreal are the only towns in the province. These courts should consist of one English judge, to be appointed by his Majesty, and a Canadian assistant, or assessor, to be named by the governor of the province. These courts should have full power to hear and determine all matters, both criminal and civil, arising within their respective jurisdictions, just as the chief justice of the province is empowered to do upon the present establishment throughout the whole province. The English judges should be barristers at law of at least five years standing at the bar, and at least, thirty years of age; and they should be such as, besides their skill and knowledge in the law, had a competent knowledge of the French language. This would be almost a necessary qualification, in order that they might be able to understand the evidence given by the French witnesses who would so often be examined before them. And to enable them to do this the more readily, and likewise to comprehend the nature and extent of such of the antient laws and customs of the country as his Majesty shall think fit to revive or continue, would be the principal use of giving them the assessors above-mentioned, who should be Canadian lawyers or notaries of good character and ability. But these Canadian assessors should only assist them with their opinion and advice, without having any

any vote or authority to decide the causes in conjunction with the judges; but the whole power of finally deciding them should be vested solely in the English judges.

This employment of the Canadian lawyers, even in this subordinate capacity of assistants and advisers, would be thought a very gracious indulgence in his Majesty by all his Majesty's new Canadian subjects: and many of them, to whom it has been mentioned, have expressed an intire approbation of it. If they were to have an equal degree of authority with the English judges in the final decision of causes, they would be much more likely than the English judges to abuse it, by reason of their connections in the country, and the enmities and partialities that those connections would give birth to: and, besides this, there are other reasons which would make it inexpedient for his Majesty to trust his new Roman Catholick subjects, so lately brought under this allegiance, with so great a degree of power.

These judges and their assistants should hold <sup>These</sup> their courts every week throughout the year, <sup>courts to</sup> fit every <sup>week.</sup> excepting one month at Christmas, one week at Easter, and another at Whitsun-tide, which are the three greatest seasons for holydays observed by Christians. And they should sit on the Tuesday or Wednesday of every week, to the end that the contending parties and their

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witnesses

witnesſes might not be under the neceſſity of travelling on Sundays to attend them.

If the uſe of juries ſhould be thought fit to be continued in criminal proſecutions, they ſhould be ſummoned only once a month, that the inhabitants might not be too much diverted from the care of their private concerns by their attendance on the courts in that capacity. But all thoſe parts of the criminal proſecutions that do not require the attendance of juries, and, if the uſe of juries was laid aſide, the whole of thoſe proceedings ſhould be carried on in the weekly ſeſſions, as well as the civil buſineſs of the diſtricts.

Method of  
proceed-  
in civil  
actions.

The method of proceeding in theſe courts in civil actions might be as follows. The plaintiff might bring a declaration, or plaint, in writing into court (which might be either in the French language or the Engliſh, as he thought proper) praying the proceſs of the court to cauſe the defendant to be ſummoned to answer it, but not to be arreſted by his body. This plaint ſhould be read to the judge in open court, in order that he ſhould determine whether or no it contained a good cauſe of action : and till he approved it, no ſummons ſhould be iſſued upon it. If he approved it, he ſhould order it to be filed amongſt the records of the court by the clerk or register of the court, and ſhould at the ſame time award a ſummons to be



be sent to the defendant to come and answer the plaintiff's demand at such future day as the judge should therein appoint. If he did not approve it, or think it contained a good cause of action, and the plaintiff should nevertheless persist in his desire of bringing an action, and should think, in opposition to the judge's opinion, that he had a good cause of action, he should have a right to have his declaration filed amongst the records of the court, together with the judge's judgement that it did not contain a good cause of action; to the end that he might appeal from the said judgement to the court of the Governour and council of the said province. And if he obtained a reversal of the said judgement in that court, he might afterwards go on with his suit in the court below.

If the defendant neglected to appear in court at the time appointed by the summons, without any good reason for such neglect, he should be condemned to pay to the plaintiff a moderate sum of money, to be ascertained by the judge, and which should not exceed the sum of five shillings sterling, as a compensation to the plaintiff for his expence and trouble in attending the court, at the time appointed by the said summons, to no purpose; and he should be summoned a second time, to come and answer the plaintiff's demand at another day, to be appointed by the judge for that purpose: and if he then also neglected to come, judgement should be given against him by default.

When the defendant appeared, he should make his answer to the plaint of the plaintiff in writing, and either in the French or English language, as he thought proper: and his answer should of course, and without the judge's approbation of it, be filed amongst the records of the court. And then (as it is not probable that the plaint and answer would be drawn so ably, in this country of dulness and ignorance, as to affirm and deny clearly and pointedly the several facts mentioned in them) the judge himself should interrogate the parties concerning those facts (which were material to the decision of the cause,) in their account of which the contending parties seemed to differ: and these interrogatories made to the contending parties, and the answers made to them by the parties, should be reduced to writing by the judge, or by the clerk of the court, from words dictated to him by the judge. And when the judge had thus found in what point of fact, material to the decision of the cause, the parties differed, he should himself state these facts in writing, and declare to the parties, that it was necessary for him to be informed by proper testimony whether they were true or false; and should thereupon ask the parties whether both, or either of them, desired that he should inquire into the truth of those facts by means of a jury, or by examining witnesses, or other proofs, himself.

The issues, or facts, in which the contending parties disagreed, should be drawn up in writing by the judge.

If

If both, or either of the parties desired to have a jury, a jury should be summoned to attend at such following session of the court as the judge should appoint. This jury should be paid for their attendance by the party at whose request they were summoned; and if both parties desired to have a jury, then equally by both parties. They should receive about five shillings Sterling a man. For at present it is a subject of complaint among the Canadians that they are taken from their necessary occupations to attend upon juries (which is by no means an agreeable employment to them) without any consideration for it; and this, if it happened every week, and without any compensation, would be thought (and perhaps justly) a very heavy burthen. But for a reward of five shillings they will serve with great alacrity.

These juries should be appointed in, near-ly, the same manner as special juries are in England: that is, the sheriff should present to the court a list of four times as many persons qualified to be jurymen as were necessary to constitute a jury; that is, if a jury was to consist of twelve men, a list of forty-eight persons so qualified; and then each party should strike out the names of twelve persons from the said list; after which the names of the twenty-four remaining jurymen should be set down in a new list in the following order;

If

der; to wit, first one at the nomination of the plaintiff, then one at the nomination of the defendant; and so on; each of the parties alternately nominating one, till the whole number was exhausted, And these persons (whose names were thus set down in this new list in the aforesaid order, and who would be enough in number to constitute two juries) should all be summoned to attend the court on the day appointed for the trial of the cause, and should be called over in the court in the order in which their names were set down in this new list. And if there appeared six or more of the twelve nominated by each of the parties, the first six of those nominated by the plaintiff that appeared when their names were called over, and the first six of those nominated by the defendant that appeared at the same time, should constitute the jury to try the cause. If fewer than six of those nominated by one of the parties, as, for instance, only three, appeared in the court when the names in the jury-list were called over, those three, or other number of persons smaller than six, should make a part of the jury which should try the cause; and the other nine, or other number requisite to make a full jury, should be the first nine, or other such requisite number, of the twelve nominated by the other party that appeared upon this occasion. The reason of summoning twice as many persons as would be sufficient

ficient to compose a jury is to provide against the non-attendance of several of them. If it was found by experience that the persons summoned usually attended very punctually, it might be sufficient to summon only fourteen or fifteen, or perhaps only twelve, or the very number necessary to constitute a jury. In this last case the original list given in by the sheriff should consist of only twenty-four names; out of which each of the parties should strike six names, and the remaining twelve persons should be summoned to try the cause. By this method of appointing a jury the disagreeable and captious practice of challenging jurymen would be avoided, which is apt to give rise to animosities between the persons challenged and the parties who object to them.

Of the jurymen so chosen a majority should have a right to determine the verdict; the present rule of requiring an absolute unanimity amongst all the jurymen being evidently absurd and unnatural, and, amongst other inconveniencies, productive of one of a very important nature, which is the perjury of some of the jurymen in every third or fourth cause that is tried: for it happens at least so often that there is really a difference of opinion amongst the jurymen, and that some go over to the opinion of the rest in opposition to their own sentiments, and consequently

A majority of the jurymen to carry the verdict.

contrary

contrary to the oath which they have taken to give a true verdict according to the evidence, which doubtless means according to their judgement of it. And it has sometimes happened that a great majority of the members of a jury has gone over to a small, but resolute, minority. This therefore calls loudly for a reformation, and more especially in a country where the natural and ordinary differences of opinion that must frequently happen amongst jurymen, are likely to be greatly heightened by national and religious prejudices.

If the agreement of twelve men is thought necessary to establish the truth of a fact, it would be necessary to impanel twenty-three jurors. But perhaps a bare majority of twelve men may be sufficient to answer all the purposes of justice in civil matters; and if so, it would be proper that juries should consist of thirteen men, that there might in all cases be a majority on one side or the other. In criminal matters it might be proper to make the agreement of two thirds of the jury necessary to the conviction of the accused person; or, if still greater tenderness to the prisoner was thought expedient, it might be proper to make the unanimous consent of the whole jury necessary to his conviction, but not upon that account to insist upon the jury's bringing in an unanimous verdict, but to consider

sider the dissent of one juryman from the verdict given by the other eleven against the prisoner, after deliberating upon their verdict for twenty-four hours, as a sufficient ground of an acquittal.

And as the issues, or points of fact, that were to be proposed to the consideration of the jury, should be drawn up in a minute and particular manner in words dictated by the judge of the court, so the verdicts of the juries should be always special verdicts, stating the facts as the jury find them to have happened, with great exactness and particularity. This would prevent jurors from encroaching upon the province of the judge and determining points of law by means of the short and general verdicts of, "*Guilty or not guilty;*" "*he did or did not undertake;*" "*he does or does not owe the sum demanded;*" and the like, that oftentimes involve points of law mixed with matters of fact, and hereby give juries an opportunity of committing these irregularities. Whenever these things happen (whether it be from the ignorance and want of discernment of the jurymen, or from their wilfulness and partiality) it is humbly apprehended that a real injury is done to the losing party, whose right it is, according to the laws of England, to have the points of law, upon which his cause depends, decided by the able and learned judges whom the King has appointed to fill the courts of

All the verdicts of jurors to be special verdicts.

justice, as much as it is to have the matters of fact in the cause determined by a jury of honest freeholders of the neighbourhood.

Examina-  
tion of  
witnesses.

The witnesses examined in the trial of a cause should be examined *viva voce* in open court, in the presence of both the parties, or their attornies or advocates; and cross-examined, if the adverse party thought proper: and they should not be allowed to deliver their testimony by written depositions or affidavits taken in private; not even in those trials that were carried on without a jury; unless by the consent of both the parties, or by the particular direction of the judge, upon very strong reasons for so doing, moved and debated in open court.

Execution  
against  
goods and  
lands.

When judgement was given for the plaintiff in a civil action, whereby a sum of money was ordered to be paid him by the defendant, either as a debt justly due to him by contract, or by way of compensation for some damage and injury that had been done to him, a writ of execution should go against the goods and lands of the defendant, but not against his person; directing the sheriff, or other ministerial officer that executed the process of the court, to levy the sum of money awarded to the plaintiff upon the defendant's moveable goods and chattels; and, in case they should not be sufficient for the purpose, then,  
but



but not otherwise, to sell part of his lands to produce the remainder of that sum. And if the executive officer should not find a sufficient quantity of either moveable or immoveable property belonging to the defendant to raise the sum awarded, and the judge should be of opinion, upon affidavits made before him for that purpose, that there was reasonable ground to suspect that the defendant had secreted or concealed some of his effects, he might require him to deliver in to the court upon oath an exact schedule of all his estate and effects of every kind, and of the places where they were to be found; and if he refused so to do, might commit him to prison till he complied. And if he omitted to set down in this schedule any part of his effects to the amount of twenty pounds Sterling, he should be liable to the penalties of perjury.

The defendant might be compelled to deliver in a schedule of all his estate and effects upon oath.

Further, where a man had bound himself to another to do a particular thing, and it was just and reasonable that he should perform such his covenant, nothing having since intervened that rendered such performance either impracticable or unreasonably burthensome and difficult, the judge should have a power to award that the party should make a specifick performance of such covenant, and might compel him to do so, in case he refused to do it, by imprisoning him till he complied.

The court should have power to decree a specifick performance of a covenant.

**Costs.** Also the judge should have a power to award reasonable costs to either party according to his discretion.

**A king's attorney in each of the three courts.** It would be necessary to have in each of these courts a king's attorney to prosecute for the king in all criminal cases, and in all suits concerning the king's revenue, and in all other suits in which the king's interest is concerned. If his Majesty should not think proper to appoint an officer in each court expressly for this purpose, the power of carrying on these several prosecutions on the behalf of the crown might be vested in the clerk, or register, of the court; just as in the court of King's Bench in England the clerk of the crown (whose principal duty is to register, or enter, the pleas of the crown amongst the records of the court) is likewise the king's attorney in that court, and prosecutes in his Majesty's behalf. But it would be more convenient, and more suitable to the honour of the crown and the dignity of the court, to have a separate officer for that purpose, to be called the king's attorney for that shire or district, as there was in the time of the French government.

**Appeals from these courts to the governour and council,** From these courts there should lie two appeals; an appeal to the governour and council of the province, and another from thence to the King in his privy council. One great use

use of the appeal to the governour and council would be to preserve an uniformity in the law throughout the whole province, which otherwise might gradually become different in the three different shires, or districts, of it, by the difference of the decisions that might be given in these three different courts of justice, if they were not subject to be revised by some common superiour court that might correct the errors that should be found in them.

and from  
thence to  
the King  
in council.

And for the same reason, the decisions of these courts should not be deemed to form precedents of sufficient authority to determine any subsequent disputes; but this authority should be ascribed only to those cases which had been decided by the governour and council of the province upon the appeals brought before them from these shire-courts, or by the King himself in his privy council.

And to the end that the governour and council of the province might not be destitute of the advice of persons skilled in the laws to assist them in the determination of the appeals that should be brought before them, it might be expedient to make the three judges of these courts, and perhaps also the three king's attornies in them, members of his Majesty's council of the province; by which means all the best law-abilities in the province

vince would be employed in making these important decisions that were to carry with them the force of law. And with this view it might be proper to require the judges and the king's attornies of the courts of Three Rivers and Montreal to attend the governour of Quebeck for one month about Christmas-time, in order to assist at the decision of these appeals, which should therefore be reserved to this season of the year.

The nature of these appeals.

These appeals should be only, as they now are, of the nature of writs of error in England, to correct the errors in law committed in the courts of these shires or districts, and not to re-consider the facts in the cause, unless they had been settled by the judge alone without the assistance of a jury. When the facts were settled in that manner, the parties might, if they thought fit, cause the evidence itself to be taken down in writing by the clerk of the court and signed by the witnesses, that it might make a part of the record, as it does upon a trial by a general court-martial in England: and, upon the removal of this record before the governour and council, they might re-consider the whole matter, the facts as well as the law, and give such judgement upon it as they thought just; but they should not admit any new evidence relating to it. Where the cause had been tried by a jury, the losing party might, if he thought proper, and the

the judge, before whom it was tried, thought it reasonable, have it tried over again by a <sup>A second</sup> second jury, consisting of twice as many ju- <sup>trial by a</sup> rymen as the first jury; and the verdict of <sup>double</sup> this second jury should be final with respect to the matters of fact determined by it.

When Gaspey shall be settled, a fourth <sup>Gaspey.</sup> judge might be sent thither, whose jurisdiction should extend over a district lying round about it, to be taken out of the district of Quebeck, which is now immoderately large. Such an establishment would be of great convenience to the inhabitants of that part of the province.

These are the outlines of a plan for the administration of justice, which, I conceive, would be well suited to the circumstances of this province, and would remove many of the inconveniences of which the Canadians now complain, and give them very great satisfaction.

FRANCIS MASERES,  
Attorney General of the  
province of Quebeck.

N. B. This plan of a method of administering justice in the province of Quebeck was delivered in to Lord Hillsborough about the month of April 1770.

F. MASERES.

Con-

Concerning the Expence requisite to  
 carry into Execution the foregoing  
 Plan for the Administration of  
 Justice in the Province of Que-  
 beck.

**T**HE expence of the above plan for the  
 administration of justice in the province  
 of Québec would not much exceed 6000l.  
 a year, upon a very large and liberal scale.  
 Each of the three courts proposed to be esta-  
 blished in the province would consist of five  
 officers; to wit, an English judge, who  
 should be a barrister at law of at least five  
 years standing at the bar, and at least thirty  
 years of age; a Canadian assessor, or assistant  
 to the English judge, who should likewise be  
 at least thirty years of age; a clerk, or register  
 of the court; a sheriff of the shire, or district,  
 over which the jurisdiction of the court ex-  
 tended; and a king's attorney, to prosecute  
 for the crown in criminal, and other, cases.  
 The salaries and fees, to be enjoyed by these  
 several officers, might be as follows:

To

Ster. per Ann.

To the English judge, a salary of £. 1000  
(No fees from any body)

To the Canadian assessor, a salary of £. 200

To the clerk, or register of the court,  
a salary of - - - - £. 100

Besides fees from the crown for entering all the criminal proceedings, and other proceedings in which the crown was concerned, amongst the records of the court, amounting usually to another - - - - £. 100

And he should likewise have some fees from the suitors, who had causes in the court, for entering the proceedings in their causes amongst the records of the court, and giving them copies of them, and the like services: but these fees should be very small, on account of the poverty of the country.

To the sheriff, a salary of - - - £. 100.

Besides fees from the crown for the execution of processses in criminal proceedings, and other matters in which the crown was concerned, amounting to another - - - £. 100

And he should likewise have some fees from private persons, who had business in the court, for executing the processses in their causes: but these fees should be very small, on account of the poverty of the country.

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To

To the king's attorney of the district,  
 a salary of - - - £. 200  
 Besides fees from the crown for the  
 prosecution of criminals, and the  
 other business he should do for the  
 crown, amounting to - - - £. 300  
 He might likewise practice in the court  
 as a private barrister in causes be-  
 tween subject and subject.

The sum total of this expence is £.2100  
*per annum*: and therefore the sum total of the  
 whole expence of the three courts in the pro-  
 vince would be £.6300 *per annum*. This is  
 upon a supposition that the judges have so  
 large a salary as £.1000 a year each. But,  
 perhaps, some gentlemen of character at the  
 bar, might be found, amongst those who are  
 not yet come into business, (of whom there  
 are always many) who would accept these  
 employments for a salary of £.800 sterling  
*per annum*. It is certain, that they might live  
 very decently, and even affluently, in that  
 country for £.500 *per annum*, and therefore  
 might lay by the overplus of their salaries  
 (whatever they were,) as a provision for their  
 families. If those salaries of the judges are  
 computed at £.800, instead of £.1000 a year,  
 the whole expence of the above establishment  
 would be only £.5700 sterling a year. But,  
 either this sum, or the greater sum of £.6300  
 a year, would be well employed in establishing  
 a system



a system of judicature that would be so convenient and agreeable to the Canadians as this would be.

This plan was mentioned to several Canadian gentlemen of good sense, while I was in the province: and they all very much approved it. And they all said, that the principal French lawyers and notaries in the province would be glad to accept the offices of assessors to the judges of these courts for the moderate salary of £.200 a year. As to the English judges, as they must quit their country, and give up their hopes of success in the lucrative and honourable profession of the law, in order to take these offices, it can hardly be supposed that they would accept of them for less than £.800 a year. Add to this, that these offices would be places of great trust and importance, and therefore ought to be accompanied with handsome salaries, to maintain the gentlemen, who should hold them, with some degree of splendour and dignity: and, upon the foregoing plan, they would also be laborious offices, since the judges would not only be obliged to decide the causes brought in their courts, when they were thoroughly prepared and matured for their hearing and consideration by the lawyers on both sides, but would be concerned likewise in assisting the lawyers to prepare them and bring to an issue; which is another reason

why their salaries should be considerable. And the causes that would be brought before them, would not be a small number of causes of greater consequence than ordinary, (as has been the case of late years in the court of King's-bench in the province,) but would be all the causes in their respective districts, most of which have hitherto been brought in the two courts of Common-pleas above-mentioned; which courts would (if the foregoing plan were adopted) be superseded by these three courts of general jurisdiction. For these reasons I cannot think that £. 800, or even £. 1000, a year ought to be reckoned too great a reward for the real services which these gentlemen (if they executed their offices faithfully) would do the province; more especially, if we consider that the chief justice of the province, upon the former plan of the administration of justice in it, (notwithstanding the small quantity of civil business that has been transacted in his court,) has had the following successive salaries; to wit, first, from the establishment of the civil government in 1764 to the year 1766, £. 600 sterling *per annum*; 2dly, from the year 1766 to the year 1768, £. 800 sterling *per annum*, by means of an addition of £. 200 a year allowed him by General Carleton, (at that time Lieutenant-Governour of the province,) with the advice and approbation of his Majesty's council of the province, on account of two circuits

circuits then intended to be made by the chief justice in every year to Montreal, in the months of March and September, and which afterwards were accordingly made by him, to hold sessions of his court there for the benefit of the inhabitants of that district; 3dly, from the year 1768, to the year 1774, £. 1000 sterling *per annum*, by means of another addition of £. 200 *per annum*, made by Governour Carleton alone (without the advice of the council of the province) in lieu of certain small fees, which had been taken by the chief justice upon issuing processses of arrest and other processses, and which amounted to about £. 40 or £. 50 *per annum*, and which he thereupon publickly relinquished; and 4thly, and lastly, (as I have been informed) £. 1200 sterling *per annum*, by the addition of a third £. 200 *per annum*, made in the year 1774 by the Lords-commissioners of the treasury here in England; ---- upon what ground, or for what reason, I do not know. These continual augmentations of the salary of the office of chief justice of the province of Quebec (notwithstanding the little trouble that attended it,) will serve, I hope, as a justification of my proposal of allowing £. 800, or £. 1000, a year to each of the gentlemen who should be appointed to execute the laborious office of one of the judges of the three districts of the province, in case the foregoing plan should be adopted.

If

If the foregoing plan should continue to be thought too expensive to be adopted in the whole extent above proposed, it might be rendered less expensive by one third part, by dividing the province into only two districts, those of Quebeck and Montreal, and establishing such courts, as are above described, in those two districts. The expence of such an establishment would be only £.4200 sterling *per annum*, reckoning the salaries of the English judges at the highest rate, that is, at £.1000 sterling each. But three courts would be certainly much more convenient to the Canadians than two, on account of the great distance of Quebeck and Montreal from each other, which is no less than 180 miles. The town of Three-Rivers is just in the middle between the two, 90 miles from each.

General Carleton formerly approved of the foregoing plan for the administration of justice, as well as several Canadian gentlemen to whom it was communicated. But afterwards he altered his opinion in some degree, and proposed that there should be only one English lawyer in the province in a judicial office, by whom (if I don't mistake) he would have all the criminal business in the province be transacted, and so much of the civil business of it as should be brought before him by appeal from the inferiour courts of civil jurisdiction. And these inferiour courts he  
would

would have to be filled by judges not bred at the English bar. In other particulars he still approves the foregoing plan, as, for instance, in the frequency of the sessions of those inferiour courts, which he recommends to be every week. And accordingly, in the new regulation of the courts of justice in the province by the ordinance passed by him and his council in February 1770, he directed the courts of Common-pleas at Quebec and Montreal to hold their sessions every week. What his reasons are for the above-mentioned change in his opinion upon this subject, I do not know, unless it be to avoid the expence that would attend the foregoing plan. But, for my own part, I am confident that justice would be much better administered by gentlemen of moderate ability, bred to the profession of the law, as is above proposed, than by persons of equal, or even superiour, abilities, that have been educated in other professions. The judges of the court of Common-pleas at Quebec, at the time of its abolition by the late Quebec-act, were Mr. Adam Mabane, the surgeon to the garrison, and Mr. Thomas Dunn, who was bred at Oporto in Portugal, as a merchant: and the judges of the court of Common-pleas at Montreal, at the same time, were captain John Fraser, a Scottish gentleman, who was first bred (as it is said) at Saint Omer's, in Flanders, and afterwards was in the army in  
the

the regiment of royal Americans, and Mr. John Martehle, a very worthy French protestant gentleman, who was born in the South of France, and educated there to some branch of trade, and afterwards lived in London, as a merchant, from the year 1746 or 1747, till the conquest of Canada by the British arms in 1760. It can be no disparagement to these gentlemen (whose integrity and diligence in the administration of justice I much respect,) to say that gentlemen of equal natural abilities with them, who should have had a law-education at the English bar, and have applied to their profession with assiduity during their youth, would be better qualified than they are, to discharge the duties of judicial offices in the province.

If the foregoing plan for the administration of justice were to be adopted, I conceive that it would be proper, that the said English judges and king's attornies in the said districts should be appointed by the King, either by his Majesty's letters-patent under the great seal of England, or by letters-patent under the publick seal of the province, passed by the Governour thereof, in pursuance of a mandate from the King's Majesty, under his signet and sign-manual, directed to the Governour for that purpose; and that, when once appointed, they should not be either removeable or suspendible by the Governour, but only by the

the King himself by his order in his privy-council: and that the said Canadian assessors, sheriffs, and clerks of the courts, should be appointed by the Governour only, by letters-patent under the publick seal of the province; but that, when once they were appointed, they should not be liable to be either removed or suspended, by the Governour alone, but by the Governour and council conjointly, by an act, or ordinance, in which at least half the whole number of the members of the council should concur.

The foregoing plan for the administration of justice in the province of Quebeck, had the honour of being much approved, about three years ago, by Mr. Thurlow and Mr. Wedderburn, his Majesty's attorney and solicitor-general: and the only objection, that (as I remember) they made to it, was the expence of carrying it into execution. But now, I presume, that objection can be no longer thought of importance, since the expence of the province of Quebeck has been lately (since the passing of the Quebeck-act,) increased from £. 10,000 sterling a year to £. 20,000, as I have been credibly informed. The whole of this expence, before the passing of the Quebeck-act, was borne by Great-Britain, and was charged in the accounts laid before parliament under an odd kind of head for such a branch of expence, that of *army contingencies*: and

the Governour of the province, or, at least, General Carleton, (who, besides being Governour of the province of Quebeck, is brigadier-general of the king's troops in the northern district of North America) has been empowered to draw upon the British treasury, at his discretion, for the money that he should find to be necessary either for the ordinary, or the contingent, expences of the civil government of the province: and the sums for which he has so drawn, have been charged in the accounts laid before the house of Commons under the aforesaid head of army-contingencies. The amount of them was usually, before the late Quebeck-act, about £.10,000 sterling a year. Since that time, I have been told, the expence of the province has been increased to £.20,000. Some of this additional expence has arisen from the enlargement of the province by the addition of all the immense tract of country behind the English colonies in America, between the rivers Ohio and Missisippi, and about the five great Lakes. For a Lieutenant-Governour is appointed at Detroit, or the Straights of Lake Erie, and a judge of some sort is to be sent thither. And the like establishment (I am told) is to be made at Michilimakinac, and at some other places in the Indian country. All which places are now in the extended province of Quebeck, and consequently the salaries of these new officers make a part of the additional expence of that province. But, I believe, that  
 much



much the greater part of this new expence arises within the old province (as it was bounded by the King's proclamation of October 1763,) and is employed in salaries and pensions to divers persons in it. Some of these pensions and salaries, I am informed, are as follows :

	Per Ann.
To the popish bishop of Quebeck, a pension of - - -	£.200
To the chief justice of the province, an addition to his salary of - -	£.200
To the lieutenant-governour, (who used formerly neither to act as lieutenant-governour, nor to receive any pay as such, during the presence of the governour in chief in the province, and who, in the absence of the governour in chief, used to receive half the governour's salary,) a salary of - -	£.600
To the attorney-general of the province, an addition to his salary of - -	£.150
To three judges, or conservators of the peace, at Quebeck, £.500 a year each, making together - - -	£.1500
To three judges, or conservators of the peace, at Montreal, £.500 a year each - - - - -	£.1500

N. B. The two judges of the court of common-pleas at Quebeck, and those of the court of common-pleas at Montreal, before the late Quebeck-act

took place, had a salary of only £.200  
 a year each, making all together £.800  
 a year. Therefore the increase of ex-  
 pence in the salaries of the new judges  
 is the difference between £.3000 and  
 £.800 a year, which is yearly - £.2200  
 To each of the 23 members of the new  
 legislative council of the province, a  
 salary, or pension, of £.100 sterling  
 a year, making together - - £.2300

N. B. As these salaries are not to be  
 given to the members of the council  
 in separate payments every time they  
 attend the meetings of the council upon  
 publick business, but are fixt salaries, to  
 be paid them whether they attend those  
 meetings, or not; they are not likely to  
 have much effect in causing the meet-  
 ings of the council to be fully at-  
 tended. The principal effect of them  
 will probably be to make the mem-  
 bers of the council extremely depend-  
 ent on the crown and governour, or  
 (where, from the high spirit of par-  
 ticular men, it shall not have that  
 effect,) to make them be considered  
 by the people as if they were so, and,  
 in consequence of that opinion, to  
 render them objects of contempt.

These sums added together make an increase  
 of expence in the province, incurred since the  
 late

late Quebeck-act, of £.5650 sterling *per annum*. And there is another new article of expence, which, I imagine, to be considerable from the number of the persons who are the objects of it, but of which I do not know the exact amount. I mean a half-pay, which was given in the beginning of last May, (when the Quebeck-act was to have taken place,) to several Canadian, or French, officers, who had gone in the year 1763, or 1764, (at the request of general Murray, who was at that time governour of the province,) upon a military expedition into the upper, or Indian, country, to oblige the Indians, (who had either continued the war against the English colonies, or begun a new one, after his Majesty had made peace with the French king,) to lay down their arms and make peace with all his Majesty's subjects. I have been told, that several of the Canadian, or French, inhabitants of the province, engaged in that service with alacrity, and went into the Indian country, to make war upon the Indians, and reduce them to terms of peace by force of arms, if they had stood out any longer; and that the presence of these Canadians amongst the Indians, on that occasion, (to many of whom they were known,) contributed very much to strike terror into the latter, and persuade them to make peace with the English: since which time there have been no Indian disturbances. This was certainly a very considerable service to his Majesty,

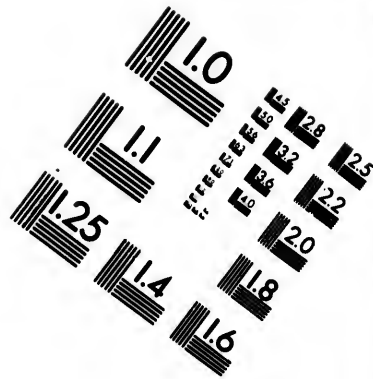
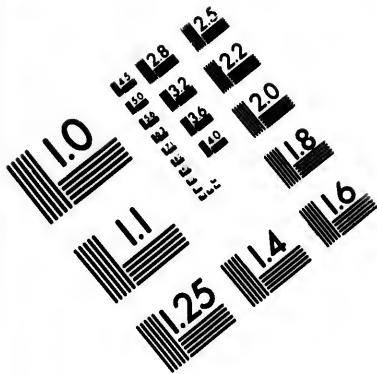
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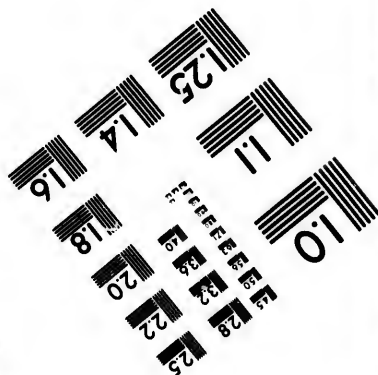
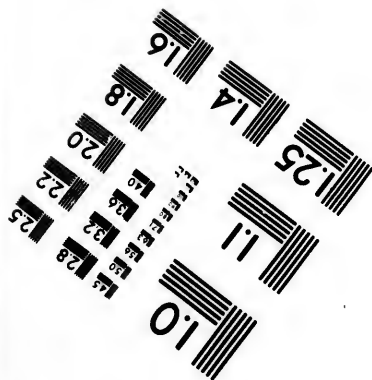
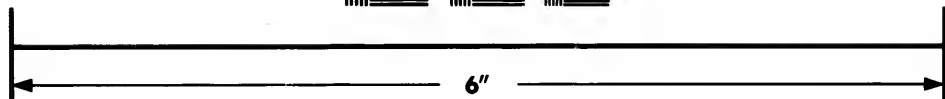
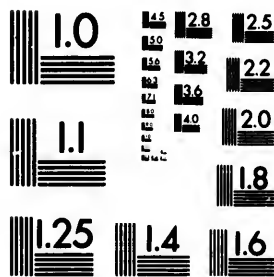
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jesty, and to the province, for which the persons, who so chearfully undertook it, deserved both thanks and a reward. I was not at that time in the province; and therefore do not know the exact particulars of this affair. But I have been told that, at the time, little notice was taken of them on account of this expedition, and that they met with no reward. But now of late, those of them who had served as officers on that occasion, have had good amends made them for this long delay of publick gratitude, during eleven or twelve years, by receiving each of them a pension which is to be continued for their lives, equal to the half-pay of the commission, in which he served on that expedition. Perhaps, this may seem to be going into a contrary extreme to that of the negligent treatment they are said to have met with immediately after their return from that expedition, when the gratitude of government for the service they had just been doing, ought naturally to have been warmest: and some people will be apt to doubt, whether this liberality has been exhibited towards them from the single motive of pure gratitude for their past service, or whether it was partly intended as an encouragement to them and their friends to engage again in the military life, and make war upon their neighbours of New-England; especially if they reflect on the hint given in the letter signed *Le Canadien Patriote*, about raising a Canadian regiment. But,

if

if this was the motive to this measure, the disinclination of the lower class of Canadians to engage in so odious a service, has completely spoiled the project. Though I don't know the amount of this half-pay, I presume it cannot be less than £. 1350 sterling a year; which, with the former sums already mentioned, will make the increase of the publick expence of the old province, (as bounded by the king's proclamation in 1763,) since the passing of the Quebec-act, amount to £.7000 a year. Surely, when the publick money is thus freely dealt about in the province, the expence of £.6300 ought not to be thought an obstacle to the establishment of the foregoing plan for the administration of justice in the province, if it be judged to be a very convenient plan for the purpose, and likely to give great satisfaction to the Canadians.

Since the passing of the Quebec-act certain duties have been payable in the province upon spirituous liquors imported into it; which duties were imposed by an act of parliament passed in June 1774, at the same time as the Quebec-act. These duties have, I believe, produced little or nothing as yet; because the province, at the time of laying them, was largely stocked with the strong liquors, on the importation of which they were laid. But, when the province shall be restored to a state of peace, and fresh stocks of these liquors shall be imported into it, it is thought these duties will



will produce £.4000, or, perhaps £.5000 a year. But, the greater of these sums is only half of the addition that has been made to the expence of the government of the province since the passing of the Québec-act: and consequently Great-Britain is, and will be, at a greater expence in maintaining the government of the province of Québec since the laying on those duties on spirituous liquors imported into it, than before. This is by no means agreeable to the Canadian common people. For they suppose, that Great-Britain will not long chuse to bear so heavy an expence on account of this province, but will proceed to lay fresh taxes on it, till it pays the whole expence of its own government: and upon this account, they are much alarmed at the number of pensions and salaries which they have seen bestowed upon the members of the legislative council and the officers above-mentioned, who served in the Indian expedition in 1764, and on the bishop, and other favourites of government in the province; all which they think they shall soon be made to pay out of their own pockets in exoneration of Great-Britain: and hence they all exclaim with one voice throughout the province, (as we have seen above in page 99,) *that they will not take arms to defend a pack of rascally pensioners of the crown, and their damned French laws.*

The king has a clear, acknowledged right to certain very considerable fines upon the alienation of all lands in the province, that are

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are holden immediately of the crown. If they are holden by fealty and homage, he has a right to a fifth part of the prices paid for them by the purchasers of them: and if they are holden by rent-service, (in French, *par cens et rentes*, and in Latin, *per censum et redditum*,) he has a right to a twelfth part of the said prices. And he has likewise a right to some other emoluments of a similar kind, arising from the said lands. What the annual value of all these emoluments, taken together, may be, I do not exactly know. But we have seen above, in page 44, that Monsieur Cugnet supposes them to amount to between three and four thousand pounds, sterling, a year; which is no inconsiderable sum. But they have never yet been collected, except in a few instances, in which the purchasers have voluntarily paid them, and even insisted upon paying them: but these instances are so few in comparison of those in which they have been neither paid nor demanded, that they are not worth attending to; insomuch that it may truly be said, upon the matter, that the whole expence of the government of this province has hitherto been borne by Great-Britain. This, I think, should make the government, for the future, pay more attention than has hitherto been done, to the collection, and proper application, of the royal revenue in the province in those plain, acknowledged instances, in which the right of the crown is undisputed.

Before I quit the subject of the expence of the foregoing plan for the administration of justice in the province, I beg leave to compare it with the expence of the plan actually adopted in that country, and intended to be carried into execution in it. The expence of this latter plan is as follows. To the chief justice (who is to have no original civil jurisdiction, but only to do the criminal business of the province, and the civil business brought before him by appeals from the courts of common-pleas, and whose office is therefore likely to be attended with very little trouble,) £. 1200 sterling *per annum*. To the three judges of the court at Quebeck £. 500 sterling *per annum* each, making £. 1500 *per annum*. The same salaries to the three judges of the court at Montreal, making £. 1500 *per annum* more. To the clerk of the crown in the court of the chief justice £. 100 sterling *per annum*. To the attorney-general a salary of £. 300 *per annum*, and fees from the crown to the amount of about £. 200 *per annum*. To the two pro-vost-marshals, or sheriffs, of the districts of Quebeck and Montreal, a salary of, at least, £. 100 each. These sums, added together, amount to £. 5000 *per annum*. And, perhaps, there may be other expences in the present system of the administration of justice, with which I am not acquainted. But this sum of £. 5000 sterling *per annum* is not a great deal less than the sum of £. 6300, which would  
be.

be required for the execution of the foregoing plan for the administration of justice in the province, upon the largest scale: so that, I think, it may fairly be concluded, upon the whole, that, if the said foregoing plan for the administration of justice in that province, be really a good one, and likely to give great satisfaction to the Canadians, the expence of it ought to be no objection to its being carried into execution.

When I so strongly recommend the foregoing plan for the administration of justice in the province of Quebeck, as likely to be attended with singular advantages to the province, I do not mean to say, that all the regulations I have proposed in it; about the manner of drawing up the pleadings by the assistance of interrogatories exhibited by the judges of the courts, and proposing a variety of distinct, and very simple, facts to the juries for their determination; and about the manner of appointing the juries, and their giving their verdict according to the opinion of the majority of them without being required to say they are all unanimous; and about the processes to be awarded in execution of judgements for the recovery of debts; and other particulars therein mentioned; are evidently and indisputably the best that can be proposed. I am far from being so confident in my own opinion upon a subject of so much difficulty, and, on the con-

trary, expect that many of those regulations will be disapproved by many people. I only wish, that those persons who shall not approve them, may consider them carefully, and propose something better in their stead. All I can say for them is, that they are the best regulations that I could contrive upon the subject, after much thought and consideration of it. But what I consider as the essence of the foregoing plan, and as most clearly of high importance to the welfare and satisfaction of the Canadians, is, that there should be three courts of general jurisdiction established in the province in the three towns of Quebeck, Three-rivers, and Montreal, that should be properly constituted and organized for the compleat administration of justice in all matters whatsoever, criminal as well as civil, in their respective districts; and that they should sit every week in the year for that purpose, (with a few necessary exceptions,) as the like courts did in the time of the French government; and that in these courts *men of good abilities, and that have been bred to the law*, should preside to administer justice; and that they should be made sufficiently independent in their situation, by a handsome salary from the crown, to be above doing mean, or unjust things, and, particularly, that they should be taken intirely out of the power of the governour, so as not to be liable to be either removed, or suspended, by him from their offices, upon any pretence, or occasion,

occasion, whatsoever. I say, that the establishment of *three such courts, with three such judges,* (such, for instance, as Mr. Hey, the present, or late, able chief justice of the province,) would be highly conducive to the welfare and satisfaction of the Canadians.

There are two particulars recommended in the foregoing plan for the administration of justice in the province of Quebeck, which, I am apprehensive, may be displeasing to some of the more zealous admirers of the institution of the trial by jury, whom I fain would not offend. These are, first, the proposal that the verdict shall be given according to the opinion of the majority of the jurymen, without requiring them to be all unanimous; and, 2dly, the proposal that the issues referred to their determination shall be all *special issues*, or simple and distinct questions of fact, intirely separated from all questions of law that may occur in the cause before the court. The first of these deviations from the trial by jury, as it is used here in England, will destroy (they will say,) that respect for, and submission to, the verdicts of juries, which arises from the opinion, that they are the unanimous decisions of twelve honest and impartial men upon the facts in litigation; and will likewise open a door to sollicitation and management by the parties, when it may be expected that the gaining one vote amongst the whole twelve will determine the

the verdict in their favour: and the other deviation from the trial by jury, as it is used here in England, to wit, the referring only special issues to their determination, will be said, by these great admirers of juries, to curtail their power too much, and thereby render them much less useful to the defence of publick liberty than they are in England, where, by means of general issues, they often have it in their power to determine matters of law, as well as matters of fact. I will now endeavour to answer these objections, and justify the aforesaid deviations from the usual method of conducting the trial by jury here in England.

In the first place then I must observe, that the respect which is said, in the first objection above-mentioned, to be paid to the verdicts of juries here in England, on account of the supposed unanimity of the jurors who give them, would be paid also to the verdicts given by juries upon the foregoing plan, when their verdicts were unanimous; and in a much higher degree, because their verdicts upon that plan would be known to be *really*, and *not pretendedly*, unanimous. And in all other cases, when the jurors are not really unanimous, it generally comes to be known here in England that they are not so, (and indeed, it is hardly possible that it can be concealed;) and the verdict they give, after long confinement together, and much altercation with each other, though it is called an

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an unanimous verdict, yet is not considered as such either by the publick or the parties to the cause, and consequently does not meet with that respect and submission which are supposed in the objection. And, even when it happens not to be known that there has been a difference of opinion amongst the jurymen, yet it is often supposed that there has been such a difference, by reason of the great frequency of such an event amongst jurors; insomuch that a verdict is hardly ever considered as having been really unanimous, except in those cases in which it is known and declared to have been so. And consequently, the apparent unanimity of verdicts here in England does not produce the good effect, supposed in the objection, of a great respect and chearful submission to them.

But, secondly, If it did produce that good effect, I must confess I should still think it a bad institution for two reasons: first, because it appears to me to be inconsistent with the rules of morality and religion to require, and in a manner compel, twelve men, who really are of different opinions upon a doubtful fact referred to their determination, to declare upon their oaths that they are all of the same opinion; and, secondly, because it opens a door to the absurdest of all methods of determining a doubtful fact, that of following the opinion of the minority of the persons to whose consideration



ration it is referred, in opposition to that of the majority; which must always be the case, when those who compose the minority of the jury happen to be men of stronger constitutions of body, and better able to go long without food, or of more resolute tempers of mind, than those who compose the opposite majority.

And, thirdly, It must be considered that the trial by jury is a new institution in Canada, of which the inhabitants of that province had no idea before the establishment of the civil government in it in the year 1764. And, therefore, it is prudent to take every method to render it agreeable and satisfactory to them; and, for that purpose, to purge it of all those imperfections and inconveniences of which they have expressed the greatest dislike, though, from our being long and early accustomed to them, they have ceased to make a forcible impression on ourselves. It is true, indeed, that, even with these imperfections and inconveniences, the Canadians, who have had law-suits in the courts of common-pleas in that province, have often chose to have juries to determine them: but it is also true that, if these imperfections and inconveniences, (which they themselves have so often objected to them,) were removed, they would be still better pleased with them. And, surely, it is reasonable to gratify them in this respect.

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As to the other objection to the proposal of taking the verdict of the majority of a jury as the verdict of the whole, to wit, that it would make them more liable to sollicitation and undue influence from the parties, whose causes they were to determine, I conceive it to be totally without foundation. For, in the first place, as the juries, after they are impanelled, are kept in box, or a room, by themselves, without any possibility of the parties, or their attorneys, having any access to them, I cannot see, how they will be more liable to be sollicitated when the verdict is given by the majority of them, than when it is given by their whole body. In both cases it will be impossible, that they can be applied to by the parties after they are impanelled. And, secondly, if it should be supposed, that they would be more exposed to be sollicitated by the parties, in the former case than in the latter, before they were impanelled, I cannot see any ground for such a supposition. In both cases it would be uncertain, and equally uncertain, before the jury was impanelled, who would be the persons that would compose it: so that, till that time, no applications could be made to particular persons, otherwise than upon a conjectural supposition that they would be upon the jury; and this conjecture would be made upon the same uncertain grounds in both cases. And, lastly, if it could be known before-hand, that any particular person would be upon the jury,

it would be less worth the while of either of the parties to endeavour to influence his vote, if a majority of the jury were to carry the verdict, than if it were necessary that the whole jury should be unanimous: because, if the verdict is given according to the opinion of the majority, the vote of such influenced jurymen could only have its proportional effect, as a single vote; whereas, when the verdict is required to be unanimous, the vote of such influenced jurymen may (if he is a strong and a sturdy man, and well resolved to stand out to the last against the other jurymen in favour of the party whose cause he espouses) become equivalent to two, or three, or four votes, and, by possibility, to the whole twelve votes of the whole jury, by bringing over either one, or two, or three, of the other jurymen, or, in the last case, all the other eleven, to say they are of his opinion, and deliver their verdict accordingly. This second objection, therefore, to the proposal of taking the verdict of the majority of the jury as the verdict of the whole, derived from the supposition of a greater degree of danger that undue influence may be exerted over the jurymen, seems to be totally without foundation: nor should I have thought of mentioning it on this occasion, if I had not heard it sometimes started in conversation upon this subject as an objection of considerable weight.

As for the other deviation above-mentioned from the trial by jury as used in England, to wit, the referring only special issues to their determination, I cannot but think it would be useful in every country where the trial by jury is in use, because it both facilitates the duty of the jury by presenting only clear and simple questions to their consideration, and keeps the proper provinces of the judges and the jury quite separate and distinct from each other. But it is more necessary in Canada than in England, on account of the much greater danger in that country of the proceedings running into intolerable confusion without it. For it is impossible to take too great pains to make things plain and easy to a Canadian jury, in order that they may rightly understand what it is they are to do, and how they are to set about it. As to the objection above mentioned, that by thus referring only special issues to the determination of juries, their power will be too much curtailed, and they will be rendered less useful to the defence of publick liberty than they are in England, where, by means of general issues, they often may determine matters of law as well as matters of fact; I can by no means allow it to be a just one, for these reasons. In the first place, I conceive it to be a breach of the duty of jurymen, and an encroachment on the province of the judges, whenever a jury knowingly and willingly determines a point of law, that happens to be

involved in a general issue referred to their determination, otherwise than as the judge, who tries the cause, directs them. This, I think, is evident from the oath which the jurymen are obliged to take at the time they are impannelled: which is, "*well and truly to try the issue joined between the parties, and give a true verdict according to the evidence.*" This plainly relates to the ascertaining a matter of fact, and not a point of law: and, therefore, if a point of law happens to arise in the course of the evidence, (as is sometimes the case,) and to be involved with the fact, originally intended to be referred to the jury, the jury ought to consider such point of law as a foreign matter, that was not meant to be referred to their determination, and which they therefore should not take upon them to determine by their own judgement; but they should either determine it according to the directions of the judge who tries the cause, or, if the parties desire it, find a special verdict; to the end that the parties may afterwards have the matter of law fully argued before the court by able counsel, and afterwards maturely considered by the judges of the court in which the action is brought, and also by the judges of the higher courts to which writs of error lie, in case the parties should chuse to bring it before those courts by writs of error. If they neglect to do this, and take upon them to determine the matter of law themselves in a manner contrary to the opinion

opinion and directions of the judge, it seems to me that they thereby do an injury to the losing party by depriving him of an opportunity of having the matter of law determined by the judges, who alone are competent, (both by the authority of their commissions and by their learning and abilities,) to make a right determination of it. *Ad quæstionem juris respondent iudices, ad quæstionem facti juratores*, seems to me to be a wise and just maxim of law, as well as an ancient and allowed one: and it ought always to be considered by juries as the polar-star by which they ought to regulate their conduct; and usually, I believe, is so considered by them.

An honest and discreet juryman, who should discover, that a point of law was concealed under the seeming matter of fact, which was referred to his consideration, and who should be solicited by the counsel of one of the parties and by his brother jurymen to bring in a verdict that should determine that point of law in a manner contrary to the opinion of the judge who tries the cause, would naturally make answer to them in some such manner as this. " Shall we, the jury in this cause, think  
 " ourselves authorized to determine the point  
 " of law; which now appears to be the hinge  
 " upon which this cause turns, when we re-  
 " flect that, if the pleadings in it had been  
 " clearly and judiciously drawn up, so as to  
 " make

“ make this point of law appear to be (what  
 “ we now find it to be,) the only, or prin-  
 “ cipal, matter in dispute between the parties,  
 “ it would not have been referred to our de-  
 “ termination, and even could not, by the  
 “ law, have been so, though the parties them-  
 “ selves should have desired that it might?---  
 “ Is not this circumstance a plain proof, that  
 “ it does not belong to our office to determine  
 “ it, but that it can justly be determined by  
 “ the judges only? --- And can we think our-  
 “ selves warranted, in point of conscience, to  
 “ take advantage of the imperfect and either  
 “ fallacious, or foolish manner, in which the  
 “ pleadings have been prepared, to arrogate to  
 “ ourselves a right of determining matters of  
 “ law, which we know the law does not allow  
 “ us in a plain and direct manner ever to do.  
 “ Surely, this would not be the conduct of  
 “ upright and conscientious men. ----- But,  
 “ further, if we could suppose ourselves autho-  
 “ rised and warranted, in point of conscience,  
 “ to determine this point of law, yet what  
 “ folly would it be for us to attempt to do so,  
 “ in opposition to the opinion of the judge?  
 “ Would it not be setting up our own opi-  
 “ nion, ignorant as we are of the law, against  
 “ the clear opinion of the learned judge, or  
 “ against the doubts, which he has declared  
 “ that he entertains upon the subject, and  
 “ which, he has told us, he wishes to take  
 “ time, and hear further arguments, to clear  
 “ up?

“ up ? Should we not, by such ridiculous pre-  
 “ sumption, run the risk of injuring the party,  
 “ against whom we should determine this point  
 “ of law, in a manner that could not after-  
 “ wards be rectified, or, at least, not without  
 “ rescinding, with ignominy to us, the whole  
 “ of our proceedings? Would this be either  
 “ wise or just? To me it appears the very  
 “ contrary of both : and nothing could, in  
 “ my opinion, justify us in doing so, but ab-  
 “ solute necessity. If, indeed, we were obliged  
 “ by any law to give our judgement, one way  
 “ or other, upon this point of law that has  
 “ arisen before us, I should have considered it  
 “ as a great misfortune, to which we must in  
 “ such a case have submitted : and I should  
 “ then have set about this dangerous duty, (to  
 “ the due discharge of which I should have  
 “ been conscious I was so unequal) with fear and  
 “ trembling for the consequence, lest I should  
 “ thereby do a material prejudice (though in  
 “ such a case it would not have been an in-  
 “ jury) to the losing party. But, fortunately  
 “ for us, there is no such absurd law in being.  
 “ We are under no such compulsion to un-  
 “ dertake a task for which we are so unfit.  
 “ We are at liberty to avoid determining this  
 “ point of law in opposition to the judge’s opi-  
 “ nion, by giving our verdict specially. And  
 “ that is what I, therefore, strongly exhort you  
 “ to join with me in doing.” These are the  
 reasons which, as I imagine, an honest and  
 scrupulous



scrupulous jurymen would alledge on such an occasion, to excuse himself from complying with his companions in determining a matter of law. My readers must determine whether, or not, these reasons would be just.

But, secondly, I am of opinion that no danger will arise to publick liberty by the strict adherence of jurymen in all cases to the determination of matters of fact only, and their cautious refusal to determine matters of law, when they happen to be intermixed with matters of fact, except in plain cases, in which the judge assures them, that the matter of law is very clear, and they comply with his directions and determine it according to them. I say, that I do not conceive that publick liberty would be at all endangered, if jurymen were always to act in this cautious and discreet manner. On the contrary, I believe, that publick liberty would be rendered more secure by their pursuing such a conduct; because the method of trial by jury (which I consider as a great support to publick liberty,) would thereby be preserved in high reputation, and be rendered more secure against the attempts of many persons of high rank and great power in the kingdom, who are supposed to bear it no goodwill. Were juries once to give way to an ill-judged ambition of determining matters of law as well as matters of fact, so that instances of that sort should become frequent; --- and were they

they likewise in the assessment of the damages sustained by plaintiffs, (which is their own proper province,) to depart often from the true and only rule by which they ought to be governed on those occasions, namely, the fair and candid estimation of the real loss, and damage, and uneasiness, which the plaintiff has suffered, and to give favourite, or popular, plaintiffs exorbitant sums of money in compensation for small injuries, whilst to other plaintiffs they gave less than the real compensation of their losses; ---- the consequence would be, that they would soon grow to be objects of terrour to the publick, instead of respect and confidence, and would give their aforesaid enemies (who at no time are fond of the institution,) a fair pretence for laying them aside by act of parliament. Upon this account I am always sorry when I hear of what is called, *a very popular verdict*, in an action of trespass, where the jury give much larger damages to the plaintiff than they, or any body else, believe to be a fair compensation for the injury he has received from the defendant, under the notion of *vindictive* damages, or *exemplary* damages, as they are sometimes called, or by way of example and terrour to other trespassers, instead of compensation for the particular trespass referred to their consideration. All such proceedings I conceive to be extensions of their jurisdiction, that are contrary to their oath, which binds them to determine the matter before

them according to the evidence. If therefore there is evidence before them, that an injury has been done to the plaintiff, which in their conscience they think would be amply compensated by the sum of five pounds sterling, they are bound by their oath to estimate the said injury at five pounds, and no more, however odious, and pernicious to the publick safety, the trespass may be which the plaintiff has sustained. And, if they estimate the said injury at £. 100, or £. 200, instead of £. 5, they say upon their oaths, that an injury that really may be compensated for five pounds, (and which they think the plaintiff would be glad to suffer over-again for that sum, or less,) cannot be compensated for less than £. 100, or £. 200 ; which is affirming a falsehood upon oath. All this appears to me extremely plain and certain, though I know there are many gentlemen of respectable characters and great understanding that entertain a different opinion. But every man must be governed by the light of his own reason upon subjects that are capable of being easily comprehended, (as this is,) and do not require a great extent of learning and knowledge to form a judgement concerning them. This then being the light in which this subject strikes me, I cannot but be concerned, whenever I hear of any verdict in which the jury have either given a plaintiff damages disproportionate to the injury he has received ; or taken upon them to determine a matter

matter of law in a manner contrary to the opinion of the judge, instead of finding a special verdict; or committed any other irregularity, that may be taken advantage of to the prejudice of that excellent institution. The true way to preserve this mode of trial, and with it the liberty of the people, not only against the oppressions of the crown, but against those of their rich and powerful fellow-subjects, (of which liberty I acknowledge it to be a main support,) is to be very discreet and temperate in the use of it, and upon no account to extend it beyond the acknowledged limits of its jurisdiction, which common sense, as well as the rules of law, must convince us, can relate only to the settling of matters of fact, and not to the decision of doubtful points of law.

There is, indeed, one subject upon which, I imagine, all lovers of publick liberty would be inclined to think, that juries ought to have the whole power of determining the matter in contest. The subject, I mean, is the doctrine of seditious libels, and the criminal prosecutions carried on against the writers and publishers of them. These prosecutions are attended with so much danger to that most valuable privilege of English subjects, the *Liberty of the Press*, or the right of animadverting freely, and publickly, (but with a strict adherence to truth,) on the pernicious tendency of publick

Of prosecutions for publishing seditious libels.

measures, that one would wish them to be intirely under the controul of *the people themselves*, so as never to be carried on with success but when *the people* themselves are satisfied of the falsehood and mischievous tendency, or, at least, of the mischievous tendency, of the writings which are the occasion of them: And for this purpose it would be necessary, that the whole determination of these prosecutions should be vested in the juries, who are a part of the people, and may be supposed to entertain the same sentiments with them. For, if the event of these prosecutions was to depend upon the inclinations of the judges, there would be reason to apprehend, that they would meet with success much oftener than would be consistent with that spirit of free inquiry and examination of the measures of government, which is necessary to the correction of the abuses of power, and the preservation of publick liberty. Those magistrates must naturally be supposed to be, in some degree, partial to government in cases of this kind, even from respectable motives. Their friendship and their gratitude would often contribute to make them so; --- not to mention their self-interest and ambition, which would lead them to hope for future favours from the crown. For, who would be the object of the censures contained in the writings under prosecution? Probably the king's ministers of state, by whose favour and patronage they, perhaps, would have obtained their  
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their offices of judges, and might hope to gain  
 still higher honours for themselves, or prefer-  
 ments for their families. In these cases, there-  
 fore, a jury of men of ordinary rank, as, for  
 example, of substantial house-keepers in the  
 city of London, would be much less likely to  
 interpret the intentions of the writers and  
 publishers of such writings in a severe manner,  
 and to consider the tendency of them as of  
 dangerous consequence to the publick, than a  
 bench of judges would be: and yet, they  
 would be sufficiently interested in the preser-  
 vation of the publick peace (upon which the  
 continuance of their own liberty, trade, and  
 property would depend,) to be free from any  
 undue bias of favour towards those persons, if  
 the writings, they had published, had a real and  
 manifest tendency to disturb it: and therefore,  
 upon the whole, they would be a safer and  
 more impartial tribunal for the determination  
 of these matters than the judges. It is reason-  
 able, therefore, that all lovers of publick liber-  
 ty should wish, that the whole power of de-  
 termining the merits of prosecutions upon these  
 subjects should be vested in the juries. But,  
 in order to its being so, it is by no means  
 necessary, in my apprehension, to depart in  
 any degree from the rules above-mentioned,  
 concerning the distinct provinces of judges and  
 juries in the decision of law-suits, and the mo-  
 ral obligation, under which jurymen have been  
 supposed to lie, to keep strictly within the  
 bounds

bounds of their own province, without ever presuming to determine any matters of law. All these rules may, as I conceive, be most inviolably adhered to, and yet juries will remain in possession of the whole of this important power of deciding all the matters in contest upon prosecutions for seditious libels. For in these prosecutions all the matters in contest between the crown and the defendant upon an issue of *Not guilty* are *mere matters of fact*, without any, the least, mixture of matters of law. This I shall now endeavour to prove by considering the several allegations which go to the composition of a criminal charge for writing a seditious libel.

Of the allegations contained in an information for writing and publishing a seditious libel.

Of the charge of falsehood in such an information.

An indictment, or information, against a man for writing a seditious libel, consists of the four following allegations, and of nothing more; to wit, first, That the defendant wrote the paper in question, which is always set forth, word for word, in the indictment or information; secondly, That he published it; thirdly, That he published it with a bad intent; and fourthly, That the paper has a tendency to disturb the publick peace. I speak of an indictment, or information, in which the seditious paper is not charged to be false, but only scandalous and malicious, and tending to cause a breach of the peace. For, if the charge of falsehood is inserted in the information, that must be reckoned as a fifth allegation contained in it. This was formerly thought a necessary part

part of a charge for publishing a seditious libel, but was omitted (for the first time, as I have hear'd,) in the information brought by Sir Fletcher Norton in 1764, against Mr. Wilkes for publishing the 45th number of the paper called the North Briton, and has been omitted in most of the informations that have been brought for such publications since that time. The reason for omitting it was, to avoid the altercation which it used constantly to occasion at the bar upon the trial of these informations, and the plausible, if not just, pretence it afforded to the defendant's counsel to insist, that the charges contained in them were not proved. For, though this charge of falsehood used to be inserted in the informations, no attempts were ever made to support it by proof, and the judges, who tried these informations, would neither require the counsel for the crown to prove that the writings in question were false, nor even permit the counsel for the defendants to bring proof that they were true; so that every information, that was brought for a seditious libel, was defectively proved in this article of the falsehood of it. Yet the juries used often to find verdicts for the crown against the defendants, notwithstanding this defect in the proof of the charges brought against them; and the court of King's-bench used, in consequence of these verdicts, to pass judgements, and inflict punishments, upon them. This, however, was sometimes complained of as an irregular



irregular way of proceeding, that was not consistent with the rules of law observed in other cases, and more especially in criminal proceedings, in which, in all other instances, the greatest strictness is required. And it was often made use of at the trial, by the defendant's counsel, as an argument to the jury, to persuade them not to find the defendant guilty, since the counsel for the crown had not made good the whole of the charge against him, but had failed with respect to so material an article as the falsehood of the paper complained of. "For, said they, if the law be really so severe as to consider the publication of a truth as a publick crime, and deserving of publick punishment, it must, at least, be allowed, that it is a less crime than the publication of the same things would be, if they were false; and therefore, the defendant, who is only proved to have published the writings in question without any proof that they are false, ought not to be considered in the same light, and made liable to be punished in the same manner, as if it had been proved that the said writings were false, as he will be, if the jury should find him guilty upon this information." This argument (which I take to be unanswerable,) was frequently made use of by the counsel for the defendants upon the trial of these informations, while the charge of the falsehood of the libel, or writing, complained of, used to be inserted in them: and it, probably, might some-

sometimes prevail with the juries, (notwithstanding the directions of the judges to the contrary,) to find the defendants not guilty. Sir Fletcher Norton; therefore, seeing that the insertion of this charge of falsehood in these informations tended only to hamper the proceedings of the officers of the crown against the publishers of seditious libels, resolved to leave it out for the future in all the informations of that kind of which he was to have the management; in doing which he thought himself sufficiently warranted by the preceding declarations of the judges on various occasions, that this charge of falsehood was *an immaterial* part of every information for a seditious libel, which the prosecutor was not bound to prove, nor the defendant permitted to disprove. And it is said, that Sir Fletcher's successors in office have followed his example. And thus, ever since that prosecution of Mr. Wilkes for the publication of the famous number 45 of the North-Briton, those informations have been drawn up without alledging, that the writings complained of in them were false; and the prosecutions of these offences have gone on, in this respect, more smoothly than before, being rid of all the difficulties, which the insertion of that charge of falsehood used to give rise to.

I say then, that in an information for writing and publishing a seditious libel, which is not

charged to be false as well as malicious and scandalous, there are only the four allegations before-mentioned, to wit, first, that the defendant wrote it; 2dly, that he published it; 3dly, that he had a bad intention in publishing it; and 4thly, that the paper has a mischievous tendency, or a tendency to produce certain bad effects that are described in the information, such as alienating the affections of his Majesty's subjects from his Majesty's person and government, or raising jealousies in their minds against the parliament or the courts of justice, and the like. Now these allegations, I conceive, to be all matters of fact. The two first of them, to wit, the having writ the paper, and the having published it, are universally allowed to be so: but the two latter, to wit, the intention of the publisher and the tendency of the paper to produce the mischievous effects described in the information, have been sometimes declared by the judges to be matters of law, or, (as they have expressed it,) inferences of law drawn from the fact of publication; and fit only to be considered and determined by the judges, without the interference of the juries. But this seems to be a modern doctrine of the judges, that has been adopted by them only since the time when Lord Raymond was chief justice of the king's-bench. For, before that time we find many judges, (and those too, some of them men of great character for abilities and learning in the law, and others of them great friends to the royal prerogative, and to a rigorous

rigorous method of government,) who were of opinion, that both the intention of the writer or publisher of the paper, and the tendency of the paper to produce certain ill effects, were proper objects of the jury's consideration. And this opinion, I conceive, to be agreeable to the truth for the following reasons.

In making this inquiry into the true distinction between matters of law and matters of fact, in the law-sense of those words, that is, between matters which are fit only for the consideration of the judges, and matters which are fit objects of the consideration and determination of a jury, I think, we may assume it as an *axiom*, or fundamental maxim, which every body must allow the truth of, that *every thing that can be proved by the testimony of witnesses, is a fit object of the jury's consideration.* For of this sort of evidence, this *external evidence*, they are universally allowed to be the proper judges: and the oath they take, when they are impannelled, "to try the issue joined between the parties and a true verdict give according to the evidence," plainly makes them so; and, indeed, it gives them a power of judging and determining according to *other evidence*, besides the testimony of witnesses, when such other evidence is produced before them. But it is sufficient for the present purpose, that they should be allowed to be the true and proper judges of all that external evidence that

consists in the testimony of witnesses. We must, therefore, inquire, whether, or no, the intention of a man in publishing a writing, and the tendency of the writing to produce a particular ill effect, are matters which are capable of being proved, or disproved, by the testimony of witnesses. Now it appears to me, that they most manifestly are capable of being so proved, or disproved. For, first, as to the intention. Who can doubt but that proof may be given by witnesses, that the paper was published with an innocent, or even a good intent, or, in some cases, with an absence of the bad intent alledged in the information, and without which there can be no guilt in the publisher? This may be easily illustrated by the following examples. It is allowed upon these prosecutions, that the delivery of a single paper from one person to another (whether the paper be in print, or manuscript,) is an act of publication. Suppose, therefore, that it could be proved, that the defendant, who was prosecuted for publishing a seditious paper, and who had been already proved to have delivered it to another person; that is, to have published it, was an illiterate man, who could neither write nor read; and that he knew nothing of its contents; and that he was a servant to a printer, or bookseller, (as, for instance, their porter,) and had delivered the paper, by his master's order, amongst other papers, or parcels of goods. Certainly this proof would be material

The intention of a man in publishing a paper is a matter of fact.

material to the question, whether the defendant was guilty, or not, of the crime imputed to him by the information, and would be sufficient to shew, that he had not that ill intention in publishing the paper, which was necessary to make him guilty of that crime, and consequently would be a ground for his acquittal. And, as this proof would be extraneous to the paper itself, and could only be given by witnesses, it could be given only to the jury, who are confessedly the judges of all the evidence that is delivered by witnesses in every cause. If, therefore, the information were brought against such servant, or porter, he ought evidently to be acquitted by the jury on account of this absence of the criminal intention imputed to him in the information. If, indeed, the information was brought against the bookseller himself, instead of his porter, and the same proof was to be produced against him as has been just now supposed to have been brought against his porter, to wit, that he had delivered the paper to another person with his own hand, but that (though he was skilled in reading and writing,) he had not read it, and did not know its contents at the time he delivered it, this, perhaps, might not be deemed sufficient to excuse him from the charge of publishing it with a criminal intention, because it was his duty, as a master-bookseller, to attend to the nature of the things he published, and examine them, or cause them

them to be examined by other proper persons, before he ventured to make them publick. I say, it is possible that he might, in such a case, be held guilty of the criminal intention imputed to him in the information; though I must confess, I do not think it quite clear that he ought to be so. And even if, upon an information against a bookseller for publishing a seditious libel, it should be proved, that the servant, or shopman, of such bookseller had delivered a seditious paper to a purchaser, by virtue of his master's general directions to him to attend in the shop and sell books to his customers, such a delivery by the servant might, perhaps, (though I am not without some doubts about it,) be held good presumptive evidence of an intention in the master to publish it, although it should be proved that the master himself knew nothing of the contents of it; because it might be said, in this case as well as in the former, that the master had been guilty of a criminal negligence in not previously examining it, or causing it to be examined, before he ventured to make it publick. But, if, in this last instance of the delivery of the paper by the servant of the bookseller, it should be proved, not only that the master knew nothing of its contents at the time of its delivery, or publication, but that, at that time, and for a week before the said delivery of it, or even before it had been received into his shop, or ordered to be sent to it, he had been sick in bed, and delirious,

lirious, and that the whole business of his shop had been conducted by his foreman, he must, I presume, in consequence of such evidence, be esteemed free from the intention of publishing it imputed to him in the information, notwithstanding it had been published in consequence of his general directions to his servant to sell books to his customers; because he would, in such a case, have been incapable, at the time of the publication of such paper, of super-intending the business of his shop, and examining the books that were brought into it, and consequently would not have been guilty of the criminal negligence above-mentioned: and therefore, in such a case, he must, I presume, be acquitted. Now, in all these cases, the proofs here mentioned, (which relate to the intention of the defendant in publishing the paper in question) could be given only by witnesses, and consequently could be given only before a jury: and therefore, the intention of the defendant in publishing the paper is a proper object of the jury's consideration.

Many more instances might be brought to shew, that the intention of a man in writing, or publishing, a paper, (or, indeed, in doing any other act, of which a moral agent is capable,) may be proved, or disproved, by the testimony of witnesses, and consequently is a fit subject for the consideration of a jury. And in most cases it can be proved no other way.

Witnesses



Witnesses may prove, that the writer of a libel confessed to them, or declared to them with triumph, that he wrote the paper in question on purpose to raise such or such a disturbance, to cause a mutiny in the army or the fleet, or a resistance to a new tax, or to some other act of government. Or they may prove, that certain praises given to particular persons in the libel, are meant ironically, and contain the severest censures; --- that they hear'd the writer confess he meant them so, and declare that he hoped that the world would understand them so; --- that they know that the persons spoken of in the paper, are not usually commended for the virtues therein ascribed to them, but are reproached by their enemies for the want of them, and consequently, that the passage is to be understood ironically. Such evidence would be highly proper and useful towards ascertaining the criminal intention of the writer of the paper in question; and without some such evidence, it will often be impossible for either the judge, or jury, rightly to understand the meaning and drift of the paper, or the intention of the writer in publishing it. Now, such kind of evidence, as it can be given only by witnesses, can be given only before a jury: and, therefore, the jury must have a right to determine, how far it tends to prove, or disprove, the point to which it relates, to wit, the criminal intention of the publisher of the paper. This seems to me to be

be so plain, that I am somewhat afraid my readers will blame me for dwelling so long upon the proof of it, and be apt to say in the words of Cicero, concerning a man who should take great pains to prove that Alexander alone, without the assistance of his soldiers, could not have won the battle of Arbela, *uteris in re non dubiâ argumentis non necessariis*. And indeed I should not have thought it needed any proof, if I had not seen it denied by persons of great authority, who have asserted, that the criminal intention of the publisher of a libel is not a matter of fact, or matter fit for the consideration of a jury, but merely a matter of law, or an inference of law from the naked fact of publication, which the judges only ought to make. Yet these very persons of authority acknowledge, that the right of determining what the writer of the libel meant by the blanks and initial letters, and the feigned names that are often to be found in seditious libels, belongs to the jury only; which is not very consistent with the said assertion, since these are a part of the writer's intention, which those persons contend to be a mere inference of law. I hope, therefore, upon the whole, that the reader, who dares to make use of his own judgement, and is not disposed *jurare in verba magistri*, will be fully convinced that the intention of a man, in publishing a seditious paper, is a matter of fact, in the law-sense of the word,

that is, an object of the evidence of witnesses, and of the consideration and determination of a jury, as well as the very act of publication itself.

Of the tendency of a paper to produce certain mischievous effects. It remains that we examine the fourth and last allegation that is contained in one of these informations, to wit, the tendency of the paper complained of to disturb the publick peace, or produce the other ill effects that are set forth in the information. Now this point, I confess, is of a more subtle nature than either of the former three, and may be more easily represented as a mere point of law, or inference of law, (as it is called) to be collected from the perusal of the paper itself. And yet, I think, upon a close examination, it will appear to be a matter of fact, or a proper subject for the consideration of a jury, as well as the three former points.

This tendency is also a matter of fact.

In order to discover whether, or no, the tendency of a particular paper is a matter of fact, or a fit object of the consideration of a jury, we must inquire whether, or no, it can be proved, or disproved, by the testimony of witnesses. For, if it can, it is a matter of fact, and the jury have a right to consider and determine it. Now it is certain that this tendency can in most, if not in all, cases be either proved, or disproved, by witnesses; though it may also, in some cases, be collected

lected from the mere perusal of the paper. If the paper contains blanks and initial letters (as most of these papers do,) then it is most evident that, till the meaning of those blanks is ascertained, the tendency of the paper cannot be known: and the right of ascertaining the meaning of these blanks is confessed on all hands to belong to the jury. Therefore in these cases the right of determining the tendency of the paper must belong to the jury. And, if the paper contains no blanks, but is full of allusions to persons of great rank and power described under feigned names by circumstances that are peculiar to them, it is necessary to have witnesses to prove that those circumstances relate to the said persons, and consequently that they are the persons meant to be pointed out to the scorn and indignation of the publick by the writer of the paper. Or in such a case, the witnesses may testify that they hear'd the defendant, the writer of the paper, himself, say that he meant the said persons by the said description, and that he hoped the publick would not fail to understand him. Or they may testify that they have often hear'd him utter the same invectives against those persons as are contained in the paper in question, though without confessing that he meant to describe those persons in the said paper, or even that he was the writer of it. All these various kinds of evidence would be admissible in such a case to

prove that the allusions in question did relate to the said persons of rank and power ; without which relation the said paper would be quite innocent and inoffensive, and have no tendency to disturb the publick peace. This tendency therefore of the paper complained of to disturb the publick peace, or produce the other bad effects set forth in the information, is in all these cases a thing capable of being proved by witnesses, and which indeed can be proved no other way, and consequently is a fit object of the consideration of a jury, or, in the law-sense of the words, a matter of fact. And even, if we suppose the paper in question to contain neither blanks, nor initial letters, nor allusions to particular persons under feigned names, nor any other sort of disguise whatsoever, (which seldom happens) but to name all the persons it means to speak of by their known names and offices, yet even in this case it is certain that witnesses may be admitted to prove, or disprove, the tendency of the paper, that is, to confirm, or to controul and refute, that internal evidence of its tendency, which, I acknowledge, will, in some degree, result from the bare perusal of it. For witnesses may be brought to prove that it has actually occasioned that disturbance which it seemed to be intended to create, as, for instance, that it has excited a spirit of dissatisfaction in the fleet or the army, or against the administration of justice by the  
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king's courts, or the like. Such evidence of the paper's having produced such ill effects would be the strongest evidence possible of its *tendency* to produce them. And, on the other hand, if a paper was writ that contained a real panegyrick upon a great man, couched under the form of a severe invective, ascribing to him those vices from which he was known to be peculiarly exempt, and denying him those virtues in which he was known most to excell, (as, for example, calling the great duke of Marlborough an ill-bred, passionate, tyrannical man, that was utterly ignorant of the art of war, and quite given up to drunkenness, when he was known to be the calmest-tempered, mildest, best-bred gentleman of his age, of great skill in the art of war, and very temperate,) and an information should be brought against the writer of it for writing and publishing a seditious libel, it would in such a case be lawful for the defendant to call witnesses to prove that the great man spoken of in the paper was so eminently free from the vices imputed to him in it, that it could only be understood, by all persons who had any knowledge of his character, as a panegyrick upon him conveyed under the form of an invective, and that it had been generally so understood by all the world, and consequently could have no tendency to excite those disturbances which a belief of his having those vices would probably occasion.

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And if the jury believed these witnesses, and consequently were of opinion that the paper had not the pernicious tendency ascribed to it in the information, (and which from the mere perusal of it, without a knowledge of the character of the person spoken of in it, one would be apt to think belonged to it,) it would be their duty to find the defendant Not guilty. In the next place I will suppose the opposite case to the former, to wit, that of a severe invective against a great man, conveyed under the form of a panegyrick, commending him for virtues which he was generally thought to want, without any blanks, initial letters, or feigned names. In such a case it would be lawful for the prosecutor to produce witnesses to prove that the writer of the paper was a bitter enemy of the great man thus ironically commended in it;---that they had often heard him express a very bad opinion of him, and deny him the virtues ascribed to him in the paper, and ascribe to him the opposite vices;---that they themselves therefore understood the paper to be meant ironically, and that they had met with several other persons who had all understood it in the same manner;---that not only the writer and the other enemies of the great man, but even most of his friends were of opinion that he was not intitled to the praises bestowed on him in the paper, and that they therefore, on that account, (as well as on account of the known enmity of  
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the writer against the great man,) believed those praises to be meant ironically, and intended to bring him into publick odium and contempt;---and that they actually had produced that effect, and raised a great disgust against him in the persons who were most connected with him, and whose chearful obedience, assistance, and concurrence, were most necessary to his discharging the duties of his great office with success and advantage to the publick. If these things were made out to the satisfaction of the jury, it would be their duty to find the writer of the paper guilty of publishing a seditious libel, notwithstanding the apparent inoffensiveness of the paper, or its want of tendency to produce any ill effect, so far as its tendency could be collected from the mere perusal of it: so that in this, as well as in all the former instances, the tendency of the paper would be ascertained by the testimony of witnesses, and would consequently be the object of the consideration and determination of the jury. We may therefore, I think, safely conclude that this fourth and last allegation, contained in an information against a man for writing and publishing a seditious paper, or libel, to wit, its tendency to disturb the publick peace, or to produce the other bad effects set forth in the information, is a proper object of the consideration and determination of a jury, or, in the law-sense of the phrase, a matter of fact, as well  
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as the three former allegations, of the writing the paper, the publishing it, and the intention with which it was published.

I have hitherto considered those things only as being matters of fact, or objects of a jury's consideration, which are capable of being proved, or disproved, by witnesses; because this is the plainest and clearest mark of distinction between them and matters of law that can, as I apprehend, be given. But I conceive that the province of the jury extends a degree further than this, and that they have a right to make all such inferences from facts as may be made without any skill or knowledge of the law, even if no new evidence could be given by witnesses in support of such inferences. For such inferences from facts are merely operations of reason, which is a talent common to all men, to jurymen as well as to judges: and, with respect to the meaning of seditious papers, and the intentions of the publishers of them, and their tendency to produce certain bad effects stated in an information, it often happens that jurymen are better able to make these inferences than judges, even where no evidence should be given by witnesses concerning them; because they have often a more extensive intercourse with the rest of mankind, and a greater knowledge of the business and conversation of the world, than judges (who are men of retired lives, given up to the study of the law, and  
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the discharge of the duties of their respectable offices,) can be supposed to have. Those inferences therefore ought not to be called inferences of law, but inferences of fact, being a secondary, or subordinate, species of facts, derived from the more simple and direct facts, of which they are the circumstances or properties. For facts may be divided into two <sup>of the different kinds of</sup> classes, which it may perhaps be of some use, <sup>facts.</sup> in considering this subject, to distinguish by the names of *primary* and *secondary facts*. The former, or *primary*, facts are those plain <sup>of primary</sup> and simple facts which are the objects of the <sup>facts.</sup> senses, and are generally proved by the positive testimony of witnesses; such as, whether such a man gave such another a blow, or a wound with a sword, or fired a pistol at him, or whether such an one delivered a particular paper to such another; though even these may sometimes be collected by inference from circumstances. These things are so plainly matters of fact, that no sophistry in the world can make them appear to any body to be matters of law. But the latter, or *secondary*, <sup>Of secondary</sup> facts are facts of a more abstract, or remote, <sup>dary facts.</sup> kind, and may often be collected from the former by mere reasoning, without the help of external testimony. Such is the intention of a man in breaking open and entering a house by night: which, if it be to commit a felony, makes the breaking and entering the house amount to the crime of burglary, which

is punished with death ; but, if it be to commit a trespass only, (as, for instance, to beat, or to frighten, somebody in the house,) makes it only a misdemeanour, which is punishable by fine and imprisonment. And such is the intention of a writer in writing and publishing a paper against the measures of government ; which, if it be to raise a spirit of discontent in the people against their governour, is criminal, and makes the writer and publisher liable to punishment ; but, if the paper is intended only as a petition to the king, or any inferiour magistrate, praying him to desist from a measure by which the petitioner thinks himself aggrieved, and it is delivered only to the person from whom the redress is prayed, it is an innocent intention, and cannot make the act of publishing the paper the object of punishment. In all these cases the intention of the party accused is a matter of fact, as well as the giving a blow, or a wound with a sword, or firing the pistol, or breaking and entering the house, and the writing and publishing the paper, though it is of a less gross and obvious nature than those other facts, and less capable of being proved by the positive testimony of witnesses, and sometimes can only be collected from those other facts by reasoning upon them ; I say, *sometimes*, because for the most part, (as we have seen above,) it will also admit of confirmation and explanation by the testimony of witnesses. These facts therefore,

fore, from their being concomitant circumstances of the former, or more simple, facts, may with some propriety be called *secondary* facts, if the former be called *primary* ones. And this distinction may perhaps be useful to prevent these secondary facts from being confounded with matters of law, with which they agree only in this point, to wit, that some degree of reasoning is to be used in discussing and investigating them both. But the difference between the cases is this. The reasoning to be used in the investigation of matters of law is grounded on the knowledge of the law, and can only be used by persons who are possessed of that knowledge; whereas, in the case of these secondary facts, the reasoning to be used is grounded on common sense and a knowledge of the world, and the present transactions of it, and the stories that are told of persons in active life and in offices of great rank and power; all which (as we before observed,) are things that are often better known to jurymen than to judges. And therefore we may conclude that, if no evidence could be produced by witnesses to confirm or disprove these secondary facts, yet the jury would still have a right to judge of them, and to infer them from the primary facts by the exercise of their own reason. But it almost always (or, perhaps, absolutely always) happens that these secondary facts, though they may in some degree be inferred from the

of the difference between secondary facts and matters of law.

primary facts by mere reasoning, yet may be also confirmed, or controuled and disproved, by the positive testimony of witnesses; which distinguishes them still more clearly from matters of law, (in determining which the testimony of witnesses is wholly inadmissible,) and proves them beyond a doubt to be matters of fact, in the law sense of the phrase, or objects of the consideration and determination of a jury, according to the fundamental position above laid down, to wit, that such matters are proper objects of the consideration and determination of a jury as are capable of being proved, or disproved, by the evidence of witnesses. I conclude therefore that both *the intention* of the writer and publisher of a paper charged to be a seditious libel, and *the tendency* of the paper to disturb the publick peace, or produce the other mischievous effects set forth in the information (which are secondary facts in the sense herein before defined,) are proper objects for the consideration and determination of a jury, or, in the usual law-phrase, matters of fact, as well as the actual writing and publication of it.

A short view of the duty of a jury upon the trial of an information for writing and publishing a seditious libel.

If this conclusion is just, the whole business of a jury, upon the trial of an information for writing and publishing a seditious libel, may be said in few words to be this; "To inquire into the conduct of the person charged with having written and published the paper in

in question, by the means of the evidence of witnesses and of such fair inferences as they, the jury, by their natural reason and good sense, are able to derive from the said evidence; and, having thus discovered what the conduct of the said defendant, with respect to the said charge, has been, to compare it with the conduct imputed to him in the information; and, if they find it to be the same with the conduct imputed to him in the information in all points, to affirm the information, by finding the defendant *guilty* of the charge in the manner and form set forth in the information, (for those are the words used in a verdict of conviction;) and, if they find his conduct, as proved by the evidence, to fall short of the conduct imputed to him in the information in any of the four points above-mentioned, to deny the information, by finding the defendant *Not guilty* of the charge in the manner and form set forth in the information, which are the words used in a verdict of acquittal." This seems to me to be an accurate and plain description of the duty of a jury on the trial of one of these informations.

When the jury have thus exercised their office of inquiring whether the defendant's real conduct has been commensurate with the conduct imputed to him in the information, and have determined that it has been so, by finding

The question, whether the offence, as stated in the information, is a legal offence, or

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finding him guilty of the charge in the manner and form set forth in the information, there still remains another point to be considered before judgement can be given against the defendant, which is whether the offence so charged and found by the jury is a publick offence, or an object of legal punishment. For, if it shall be made appear by just and legal reasonings at the bar, that the writing and publishing the paper in question, though it was done deliberately, and has the tendency ascribed to it in the information, yet is not an offence of such great and publick consequence as to be an object of legal punishment, it will be the duty of the court to forbear giving judgement against the defendant, and to dismiss him with impunity, notwithstanding the verdict of conviction found against him by the jury. But this, I apprehend, is a matter which the judges only have a right to determine, either upon a motion made before them on the behalf of the defendant in arrest of judgement, or of their own accord, without such a motion, if they of their own accord come to be of opinion that the facts charged in the information do not constitute a legal offence. For this is really and truly a matter of law, and not a secondary fact, or inference from other facts, nor a matter to which the testimony of witnesses is in any degree applicable, (like the intention of the writer and the tendency of the paper, and other

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other such secondary facts as have been above mentioned,) and therefore is not a fit object of the consideration and determination of a jury: An instance or two will make this matter very plain. It is certainly a publick and punishable offence to publish a paper tending to disgrace and vilify the king upon the throne, and alienate the affections of his subjects from his person and government, more especially if the imputations thrown out against him are false. This was the offence committed by Doctor Shebbeare in the reign of our late gracious Sovereign, George II. for which, in the opinion of most people, he was deservedly punished. But, if the same abuse were now to be re-published against the same good monarch, it may be doubted whether the publisher of it would be an object of legal punishment, though he would justly incur the censure, and excite the indignation, of all good men that remembered the just and prudent government, and respected the memory, of our late sovereign. For, as it can no longer tend to produce the same bad effects as formerly, the monarch, who was the object of it, being no longer among the living, it seems unreasonable to suppose that it could be the object of that legal censure which was grounded on its tendency to produce those bad effects. Yet it might be said, on the other hand, that it still had a tendency to produce *some* bad effects, though not the same



same as before, nor of so great importance; and that, on account of its said tendency to produce these lesser bad effects, it ought still to be the object of some, though a lesser, legal punishment. And to this it might be replied on the behalf of the re-publisher, that every act that *in a small degree* has a tendency to produce some ill effect, ought not to be the object of a legal punishment, and is not so by the law of England;---that, for example, the most scurrilous words spoken, (but not written,) even of a person now alive, are not the object of such punishment, but only of a civil action; and many scurrilous words are not even the object of a civil action, but only of a proceeding in the ecclesiastical court of the bishop of the diocese, carried on *pro salute animæ, et correctione morum*;---that only those actions are the objects of legal punishment in the temporal courts which have a tendency to produce some very pernicious publick consequences, and disturb the administration of the government; and that this was not likely to be the effect of a republication of the abuse upon our deceased sovereign; and consequently that such a republication was not the object of legal punishment. Now in all this argument the testimony of witnesses is evidently quite inadmissible; nor can mere reason, or common sense, determine on which side the truth lies: but it is plain that this can only be determined by the principles of the criminal law of England,

England, and the decisions of former judges, upon solemn arguments, in cases of the same kind, or that are nearly similar to it, if such are to be found: and, therefore, it is truly a matter of law, and must be determined by the judges only. But this does not at all interfere with the right that has been above ascribed to the jury, of determining the truth of all the charges contained in the information, or declaring whether, or no, the conduct of the defendant, as proved by the witnesses, agrees, or is commensurate, with the conduct imputed to him in the information, with respect to all the allegations of which the information is composed.

I have now gone through all I had to offer in the way of reason and argument, concerning the extent of the province of the jury in the trial of an information for publishing a seditious libel. I am sensible, I have used a great number of words on this occasion, and even some repetitions, which I knew not well how to avoid, and which, I therefore hope, the reader will excuse; more especially as the reason of my treating this matter so fully was that he might clearly see the grounds upon which I have presumed to differ in opinion from those learned and respectable persons who have declared, that the intention of the publisher of a seditious paper is a matter of law, which the jury have no right to

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consider. The great respect due to those eminent persons made me at first almost afraid to differ from them, and excited me to examine the subject with as much care and attention as I was capable of bestowing on it; in consequence of which I became perfectly convinced, that their opinion was not well-grounded. And the same respect to their authority made me afterwards cautious of expressing the opinion I had formed in opposition to that which they had declared, without, at the same time, setting forth, in the fullest manner I could, the reasons upon which I had presumed to differ from them, and adopt the other opinion. And now, that I have ventured to state and maintain that other opinion, I shall (from the same motive of respect to those great persons) endeavour to confirm and support it by the authority of other great persons who formerly held the same high offices of judicature with themselves, opposing judge to judge, and chief justice to chief justice, in at least equal numbers, and marshalling on my side of the argument,

*Pares aquilas, et pila minantia pilis;*

lest the weight of these great modern authorities should be thought to over-bear the arguments, which, in the course of this inquiry, have been deduced from reason only,  
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in favour of what I take to be the true opinion upon the subject.

In the famous trial of the seven bishops, <sup>Authori- ties in sup- port of the foregoing positions.</sup> who were prosecuted in the last year of the reign of king James II. by an information in the court of King's-bench for publishing a seditious libel, Sir Robert Sawyer, (who had been attorney-general,) Mr. Finch, and Mr. Somers, (who was afterwards Lord-chancellor,) were of counsel for the bishops, and Sir Thomas Poways, (the then attorney-general,) and Sir William Williams, (the then Solicitor-general,) were of counsel for the Crown. Sir Robert Sawyer contended, " That " both the falsity of the paper, and that it " was malicious and seditious, were all mat- " ters of fact to be proved;" and made this the first head of his speech to the jury: so that here we see, that the falsehood of the paper, the malicious intention of the writer, and the seditious tendency of the paper, are all asserted by this learned lawyer to be matters of fact and objects of the consideration of the jury. His brother-counsel held the same language. Mr. Finch expressed himself thus: " If you, gentlemen, should think " that there is evidence to prove the deli- " very, by the bishops, of the paper set forth " in the information, yet, unless their pre- " senting it to the king in private may be " said to be a malicious and seditious libel,

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“ with an intent to stir up the people to fe-  
 “ dition, and to diminish the King’s prero-  
 “ gative and authority : unless all this can  
 “ be found, there is no man living can  
 “ find the bishops guilty upon this informa-  
 “ tion.” This was asserting, that the *ill in-*  
*tention* of stirring up discontents in the minds  
 of the people against the King, was an essen-  
 tial part of the charge, and one that the jury  
 ought to take into their consideration, and  
 not leave to the judges as a mere inference of  
 law. Mr. Somers spoke next, and said, That  
 “ the paper could not possibly stir up fedi-  
 “ tion in the minds of the people, because  
 “ it was presented to the King alone. False  
 “ it could not be, because the matter of it  
 “ was true. There could be nothing of ma-  
 “ lice : for the occasion was not sought ; the  
 “ thing was pressed upon them. And a libel  
 “ it could not be, because the intent was in-  
 “ nocent.” The attorney-general, Powys,  
 thereon said, “ That he should not *now* meddle  
 “ with what the defendant’s counsel had of-  
 “ fered, because it was not pertinent.” And  
 then Sir Robert Wright, the chief justice, in-  
 terposed with these remarkable words : “ Yes,  
 “ Mr. Attorney, I’ll tell you what they offer ;  
 “ which it will lie upon you to give an answer  
 “ to : they would have you shew how this  
 “ has disturbed the government, or dimi-  
 “ nished the King’s authority.” Here then  
 we have king James II’d’s chief justice of the  
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King's-bench expressly declaring in this celebrated trial at bar, that the tendency of the paper in question, to disturb the government, ought to be made out to the satisfaction of the jury. Mr. Justice Powell said, "The contrivance and publication are both matters of fact, and, upon issue joined, the jurors are judges of the fact, *as it is laid in the information.*" Mr. Justice Holloway, after the evidence had been summed up to the jury, spoke these words: "The question is, whether this petition be a libel, or no. Gentlemen, *the end and intent of every action is to be considered*; and likewise in this case we are to consider the nature of the offence that these noble persons are charged with. It was for delivering a petition, which, according as they have made their defence, was with all humility and decency that could be: so that, if there was no *ill intent*, and they were not men of evil lives, or the like, to deliver a petition cannot be a fault, it being the right of the subject to petition. *If you are satisfied there was an ill intention of sedition, or the like, you ought to find them guilty*: but, if there be nothing in the case of that kind, I think it is no libel. *It is left to you, gentlemen*: but that is my opinion." The jury are here expressly directed to consider, whether the bishops had any intention of sedition, or not, in presenting their

their petition to the King, and to find them guilty, or not guilty, accordingly. So far was this judge from thinking, that the intention of the defendants was a mere inference of law, which the jury had no authority to make. Mr. Justice Powell went further still, and said, that the falsehood of the paper, as well as the malicious intention of the publisher of it, and its tendency to disturb the government, ought to be proved: by which we may observe, by the bye, that the modern opinion, “ That the falsehood charged upon  
 “ a libel in an information, is not a material  
 “ part of the charge, and needs not be proved,” was not at that time universally adopted by the judges. His words are as follow:  
 “ Truly, I cannot see, for my part, any thing  
 “ of sedition, or any other crime, fixed upon  
 “ these reverend fathers. For, gentlemen,  
 “ to make it a libel, it must be false, it must  
 “ be malicious, and it must tend to sedition.  
 “ As to the falsehood, I see nothing that is  
 “ offered by the king’s counsel, nor any  
 “ thing as to the malice. Now, gentlemen,  
 “ the matter of it is before you; you are to  
 “ consider of it, and it is worth your consideration, &c.” Such were the directions of chief Justice Wright, and Justice Holloway, and Justice Powell, at this famous trial: by which we see, that the intention of the defendants in publishing the petition, or paper, and the tendency of the paper to raise dis-  
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contents in the minds of the King's subjects against his government, were so far from being considered by them as mere inferences of law, which they, the judges, only had a right to make, that they were recommended to the consideration of the jury as the principal objects, to which it was necessary for them to attend. And chief Justice Holt appears to have been of the same opinion, when he summed up the evidence to the jury upon the trial of the information against Tutchin, the writer and publisher of certain papers, called *The Observators*, in the year 1704. His words, on that occasion, were as follows: "Gentlemen of the Jury, this is an information for publishing libels against the Queen and her government." And then, after stating the proof of the publication, and reading some passages from *The Observators*, he goes on in this manner: "So that, now you have heard this evidence, you are to consider whether you are satisfied that Mr. Tutchin is guilty of writing, composing, and publishing these Libels. They say they are innocent papers, and that nothing is a Libel but what reflects upon some particular person. But this is a very strange doctrine, to say it is not a libel reflecting on government to endeavour to possess the people that the government is male-administer'd by corrupt persons that are employed in such and such stations, either in

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“ the navy or army. For it is very necessary  
 “ for all governments that the people should  
 “ have a good opinion of it: and nothing  
 “ can be worse than to endeavour to procure  
 “ any animosities as to the management of it.  
 “ This has been always looked upon as a  
 “ crime; and no government can be safe,  
 “ without it be punished. Now, *you are to*  
 “ *consider*, whether those words, I have read  
 “ to you, do not tend to beget an ill opinion  
 “ of the administration of the government.”

Here we find this able Chief Justice expressly directing the jury to consider *the tendency* of the papers in question, to wit, Whether they do not tend to beget an ill opinion of the administration of the government? How different is this conduct from asserting that this tendency is a mere inference of law, which the judges only have a right to make, without any concurrence of the jury? From these authorities, together with the reasons above set forth, I flatter myself, that the reader will join with me in concluding<sup>e</sup>, that, upon the trial of an information for writing and publishing a seditious paper, the jury have a right to determine all the particulars of the charge, the malicious intention of the writer, and the mischievous tendency of the paper, as well as the more simple facts of the writing and publication of it, and the meaning of the blanks and feigned names in it; and that the only question, which the judges are

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to determine, is, whether, if the whole information, with all the allegations contained in it, the malicious intention of the writer, and the mischievous tendency of the paper, be admitted by the defendant, or found by the jury, to be true, the conduct so described and found, is an object of legal censure. I could wish, that even this last particular were also to be determined by the jury: but it rather, I must confess, appears to me to belong to the province of the judges.

The occasion of entering into this discourse about informations for seditious libels, and the right of the jury to determine all the matters contained in them, was to shew that the proposal made above in the foregoing plan for the administration of justice in the province of Quebeck, to wit, "That the juries in that province should have only special issues referred to them for their determination," would not at all diminish their power in the trial of informations for this offence. This, I presume, is now sufficiently apparent. For, since all the allegations, contained in these informations, are matters of fact, or fit objects of a jury's consideration, it is evident that they would retain their power of determining them, when they should be separately and distinctly denied by the defendant, (according to the method proposed in that plan,) as well as now, that they are

denied by him in the lump by the general plea of *Not guilty*. In that case, his plea would run thus; 1st, That he did not write the paper in question; 2dly, That he did not publish it; 3dly, That he had no bad intention in publishing it, but did it by mistake, or not knowing its contents, or not with a view to spread it through the world; but to prevent its being so spread, by delivering a copy of it to a magistrate; or because he conceived it to be likely to produce different effects from those described in the information; and 4thly, That it has not, in truth, the tendency ascribed to it in the information, but a tendency to produce very different effects. And the jury would give separate verdicts, distinctly upon all these different questions. In both ways of proceeding the same matters would be considered and determined by them: only in the one way they would do it separately and distinctly, or in the detail, and in the other they would do it in the lump.

I hope therefore, that the friends of Publick Liberty and the Trial by Jury, will not consider me as an enemy to that excellent Institution, on account of the alterations I have recommended to be made in it in the province of Quebeck, in order to render it more convenient and agreeable to the people of that province. But, if, after all I have alledged in support of them, these alterations,  
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in that excellent mode of trial, should be thought whimsical and injudicious, or dangerous to the liberties of the people, I beg it may be remembered, that the Canadians are, upon the whole, well pleased with the trial by jury, in civil matters as well as criminal, even with all the imperfections and inconveniences, which they have objected to in its present form; as appears by their usually having chosen, during the space of ten years, to have their civil suits, in the courts of common-pleas in that province, decided by a jury, whenever the matter in dispute has been of any considerable value, although they might, if they had pleased, have left the whole decision of them to the judges. And therefore, I hope, this excellent mode of trial, of which they have been causelessly deprived by the late Quebec-act, will be restored to them.

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**A Remark on the Possibility of re-  
viving some Parts of the French  
Law in the Province of Quebeck,  
for the Satisfaction of his Majesty's  
new Canadian Subjects in the said  
Province, with Respect to the Settle-  
ment of their Families, without re-  
voking his Majesty's Proclamation  
of October, 1763.**

**I**T has been shewn above in pages 285 - 292,  
that the king had, by the articles of capi-  
tulation in September, 1760, and the defini-  
tive treaty of peace in February, 1763, re-  
served to himself a power of introducing the  
English laws into the province of Quebeck,  
in lieu of the custom of Paris, and other  
French laws and usages, that had been ob-  
served in it in the time of the French govern-  
ment. And it has been shewn also, in the  
same place, that his Majesty, by his royal  
proclamation in October, 1763, did make  
use of the power, so reserved to him, for the  
purpose of introducing the laws of England  
into the said province, as well as the English  
mode of government by a governour, council,  
and assembly. The latter institution, to wit,  
the government by an assembly he did not  
promise

promise to establish immediately, but only *as soon as the situation and circumstances of the province would admit thereof*, which was generally understood to mean as soon as there was a sufficient number of protestant landholders in the province, to afford to the Canadians a reasonable choice of members, to constitute such assembly: but the other regulation, the establishment of the laws of England in the province, was to take place *immediately*, his Majesty assuring his subjects, (who should go and reside in the said province,) *that, in the mean time, and until such assemblies can be called as aforesaid, all persons inhabiting in, or resorting to, his Majesty's said colonies, [Granada, East-Florida, West-Florida, and Quebeck,] may confide in his royal protection for the enjoyment of the benefit of the laws of his realm of England: and that for that purpose his Majesty had given power under the great seal to the governours of his Majesty's said new colonies to erect and constitute, with the advice of his Majesty's councils of the said provinces respectively, courts of judicature and publick justice within the said provinces, for the bearing and determining all causes, as well criminal and civil, according to law and equity, and as near as may be, agreeably to the laws of England; with liberty to all persons, who may think themselves aggrieved by the sentence of such courts, in all civil cases, to appeal, under the usual*

usual limitations and restrictions, to his Majesty in his privy council. Here is a solemn act of the of the crown, under the great seal of Great-Britain, introducing the laws of England into the province of Quebeck. And this was accompanied by another important instrument, likewise under the great seal of Great-Britain, the commission of Captain-general and Governour in chief of the province of Quebeck, given to General Murray, pursuing the same plan, of establishing the English law in the province, that was adopted by the proclamatin. And these two instruments, which proceeded immediately from the royal authority, were followed by provincial ordinances made by Governour Murray and his council in conformity to them, erecting courts of judicature in the province to administer justice according to the laws of England. And these courts sat and acted for ten years together agreeably to the said ordinances; and all sorts of contracts were made in the province upon the supposition, that those laws were in force in it, and were likely to continue so; and the bulk of the Canadian inhabitants of the province seemed very well pleased with their condition, as well as the British settlers in it. Who, that attends to these plain facts, can help being astonished, that, at the end of about ten years after the introduction of this English system of government, namely, in June, 1774, an act of parliament

parliament should pass, *to revoke, annul, and make void*, this series of solemn publick instruments? To what promises of government can people hereafter trust! --- It would surely have been more decent, and would have shewn a greater regard to the dignity of the crown, and a greater tenderness for its honour, to have left the proclamation and the governour's commission in force in the province, and to have revived in the province only those few parts of the former French system of laws, that were judged to be most essentially necessary to the domestick peace and satisfaction of the Canadians; which, I believe, would have been found to be nothing more than their laws of tenure, their modes of conveying land, the laws of dower and inheritance of landed property, and perhaps of the distribution of the goods of persons who die intestate. Surely, this would have been a more prudent, decent, and honourable way of proceeding than totally to rescind the royal proclamation of October, 1763, and all the other important publick acts above-mentioned! And this more discreet and cautious way of proceeding seems even to be suggested by some words in the proclamation itself, which seem to have been intended to preserve some parts of the French laws of the province, which might be thought to be most necessary to the satisfaction of the Canadians, and to prevent the



the immediate introduction of the English laws upon those heads. The words, I mean, are these, " That the courts of judicature, to be erected in the said province, shall determine all causes, as well criminal as civil, according to law and equity, and, *as near as may be*, agreeably to the laws of England." These words, *as near as may be*, must have some meaning. And the most natural and obvious sense that can be put upon them, seems to be that of an intimation to the king's English subjects, who should go and settle in the province in consequence of this proclamation, that there might be *some* subjects (of a nature not to affect their principal concerns, their personal liberty, and the security of their commercial property,) upon which the laws of England ought not to be, and would not be, introduced into it. And these, we may presume to have been (though I confess, it is rather to be lamented, that they were not expressed in the said proclamation more distinctly) the modes of the tenure of lands, the methods of conveying them, and the transmission of them by dower and inheritance upon the deaths of their then present proprietors. For these, it is certain, are parts of the law of England, which, if they had been suddenly introduced into the province, would have created great uneasiness and confusion: and consequently, we may reasonably suppose them to have been those parts of the law

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law of England, which his Majesty, in his royal wisdom and clemency, intended to except, by the words, *as near as may be*, from the general body of the laws of England, introduced by the proclamation. And these, I will venture to say, are the only parts of the law of England, the introduction of which into the province would be attended with those unhappy consequences. And accordingly, we find that these, and the laws that exclude papists from places of trust and profit, (which latter laws can affect but a very few persons in the province) are the only parts of the law of England to which the Canadian petitioners, who have desired to have their antient laws restored to them, have made any objection. And if these petitioners have objected to no other parts of the law of England, we may be sure that the bulk of the Canadian freeholders in the province would not object to them, because it is well known that they are much better pleased with the English laws and government, than the handful of men whose names are signed to that petition. The Canadians, therefore, might have been made easy without *revoking, annulling, and making void*, the royal proclamation and promise above-mentioned, by only interpreting those words, *as near as may be, agreeable to the laws of England*, in such a manner as to preserve to them their antient French laws and customs upon those tender

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subjects

subjects that relate to their domestick happiness ; or, if those words are not thought to be capable of such an interpretation, by reviving and restoring, by express enacting words, and in opposition to the proclamation, the French laws upon those subjects. The revoking the proclamation *only so far* would have been justifiable. For it would only have been correcting an error, or, rather, supplying an omission in it, that had arisen from precipitation ; since no one can suppose, however general the words of the proclamation may be, (unless they had been quite express to that purpose,) that it was the intention of the framers of it, at once to overturn the laws of dower and inheritance throughout the province. And this would have given no dissatisfaction to the English inhabitants of the province, who are the persons to whom the promises in the proclamation are principally addressed, and who have settled in the province in consequence of them. And, where the persons to whom a promise is made, consent to the non-performance of it, the person who made it, is, by all the rules of justice, absolved from the obligation to observe it ; even when it has been made with solemnity and deliberation. These, therefore, are the parts of the French laws of the province of *Quebeck*, which might have been either revived, (if they had been supposed to have been abolished,) or confirmed,

(if

(if they had been supposed to be still legally in force,) by an act of parliament, without any breach of the royal promise made to the English settlers in that province, or rather, indeed, to all the inhabitants of it: for the promises in the proclamation were made to all the inhabitants of Canada, the French as well as the English, though they seem principally to have been intended as inducements to the latter to resort thither; and the bulk of the French, or Canadian, inhabitants of it have (as we have seen,) been well-pleased with the introduction of the English laws into the province, as far as they have had experience of them. But no arguments can be justly derived from hence for rescinding (as has been done by the late act of parliament,) the whole proclamation, so as to deprive all the inhabitants of that province, both Canadian and English, of those excellent parts of the law of England, which must necessarily be supposed to have been intended to be introduced into the province by those emphatical words in the proclamation, which promise to the persons who shall resort to it, and reside in it, *the enjoyment of the benefit of the laws of England*. Now these words, as I conceive, must be supposed to have been meant to introduce at least the two following parts of the law of England; to wit, first, those parts of it which are particularly beneficial to the subject, by the protection of his person and property against

the oppressions of men in power, and, secondly, those parts of it which have relation to commerce, and the method of enforcing the payment of debts contracted in the course of it, and settling the disputes between the merchants that should be concerned in carrying it on. For, these are the persons whom the proclamation more particularly invites and exhorts to go and settle in that province: and these are the laws of England, which they must be supposed to be most attached to, and to have wished to see introduced into the said province before they ventured their persons and property into it, and to have believed and understood to have been introduced there by the said proclamation. Of the first of these two kinds of laws are, in a most especial manner, the petition of right and the other laws of England, relating to the writ of *Habeas corpus*, both according to the common law and by the statute, for the protection of personal liberty; which distinguishes the subjects of Great-Britain from those of almost every other state in the universe. And of this kind also is the trial by jury in all criminal matters, and in all civil actions for wrongs, or injuries, received, in which a pecuniary compensation is to be given to the injured party for the injury he has sustained; such as actions of slander, battery, and false imprisonment; which partake, in a great measure, of the nature of criminal matters. For, in all those cases, it is obvious

obvious that the intervention of a jury of one's equals to determine, in the case of a criminal prosecution, upon the guilt, or innocence, of the party accused, and, in the case of actions of trespass for injuries received, to assess the damages sustained by the sufferer, must be singularly useful (from the sympathy, which the parity of their condition must inspire them with for the accused, or the injured, party,) to the protection of the weak against the strong, the poor against the rich, and the private man against the powerful and high-stationed oppressor. And of the second kind are the laws relating to insurances, bankruptcies, the limitation of actions, the process of imprisonment for debt, and the trial of matters of contract, where the cause of action is of a commercial nature, (as well as of matters of injury in all cases,) by a jury; and many other important articles. In all these things it is evident beyond a doubt, that the royal promise was intentionally and deliberately given, that the laws of England should be observed in that province. In these points, therefore, the proclamation ought not, in point of justice, to have been revoked by the late Quebec-act; and now, that it has been revoked by it, it ought, from the same motive of justice, to be re-established. For, great and supreme as I allow the power of the parliament to be, it cannot make *that* to be just which is in its nature unjust, as the resumption of *the benefits*  
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*of the laws of England, (the Habeas corpus, and the trial by jury in civil actions, and the like,) from the British and other inhabitants of the province, to whom they had been granted by the king's proclamation, appears evidently to be. I therefore hope, that, in some calmer moment than that in which the Quebeck-bill was passed, the said royal proclamation will be re-established in the province with respect to these beneficial parts of the law of England, which had been introduced by it into the province, and enjoyed by its inhabitants for ten years, and that the French laws, that shall be permitted to continue in it, will be restrained to a few distinct heads, that may be thought most necessary to the family-peace and domestick happiness of the Canadians, and the English law again established in the province as the general law of it, by which the courts of justice should be governed in their decisions upon every other subject, except those few on which the French laws should have been so reserved.*

The justice and reasonableness of restoring the English law on some of the more important subjects that have been just now mentioned, seems to have been felt and acknowledged by his Majesty's ministers of state soon after the passing of the unfortunate Quebeck-bill; though, while that bill was in the house of commons, they voted for the rejection of a clause that was offered by Mr. Dempster for preserving

preserving to the inhabitants of that province the English laws relating to the writ of *Habeas corpus*, and likewise of another clause for preserving the trial by jury. But very soon after the bill was passed, a draught of a provincial ordinance was prepared by Mr. Hey, the chief justice of the province, by the direction of the Earl of Dartmouth, (at that time his Majesty's secretary of state for America,) in order to be carried over by Mr. Hey, and proposed to the Governour and new legislative council of the province, and by them passed into a law; in which draught the English laws relating to the writ of *Habeas corpus*, and to the trial by jury in civil cases, (under certain restrictions and modifications,) and likewise the English laws relating to commercial matters, were to be re-established in the province. This draught of an ordinance was accordingly carried over to the province by Mr. Hey, (who arrived there on the 19th day of June last, 1775,) and was proposed to the legislative council of the province in the month of September following; and there debated. The new French Roman-catholick members of the council opposed it, but without (as it is said) alledging any reasons for their opposition: but the rest of the council seemed disposed to pass it; in-somuch that it would probably have passed into an ordinance of the province, if the invasion of the province by the provincials under General Montgomery had not obliged the Governour



Governour to break up the meetings of the council before they had compleated their discussion of it. All this, I am assured, has been publickly declared by Mr. Hey, in his speech in the house of commons, upon a late motion of the Hon. Mr. Charles Fox ; and therefore, I make no scruple to mention it as a thing both certain and notorious. Now, since these very considerable alterations of the Quebeck-act, in favour of English Law and Liberty, are confessed to be just and reasonable, it can hardly be denied that, in order to do the inhabitants of that province compleat justice in those respects, they ought to be made by the same high authority that passed the act which they are intended to correct, that is, by the authority of parliament. For, if they are made only by the aforesaid legislative council, the people of the province will not have reason to consider them as permanent regulations ; since the same legislative council, that establishes them one year, may repeal, or abolish, them the next. They ought, therefore, to be established by act of parliament, with a clause to restrain the legislative council of the province from ever abrogating, or abridging, them. When that is done, the people of the province will have the authority of the highest legislature known in the British government for the security and permanency of their enjoyment of them. And that, no doubt, will satisfy them.

Whenever

Whenever an act of parliament shall be passed for that purpose, (which from the strong reasons of justice that call for it, I cannot doubt, will, one day or another, be done,) I apprehend, that the best way of doing it will be to revive the king's proclamation of October, 1763, and re-establish the law of England in the province, as *the general Law* of it, and to enact the continuance of the French laws upon a few particular heads, to be enumerated or specified in the act, (such as the tenure of lands, the modes of conveying them, the transmission of them by dower and inheritance, and the like,) as being those parts of the French law which the King, in his royal wisdom and clemency, *had originally meant*, at the time of issuing his said proclamation, to continue to his new Canadian subjects by virtue of the words, *as near as may be*, that have been already mentioned. This method of proceeding will be both more honourable to the crown, and likewise much more safe and prudent with respect to the convenient administration of justice in that province, than to revive particular branches of the English law, (such as the laws relating to the writ of *Habeas corpus*, and the trial by jury in civil matters, and the like,) and to leave the French law as the general law of the province in all matters of property and civil rights, except those heads upon which the English law shall have been so revived. For, as Englishmen are

likely to be the King's judges in that province, (unless his Majesty shall think fit to procure judges from amongst the advocates at the parliament of Paris; which is not to be supposed;) it is evidently desirable that the laws, which they are to administer, should be those which they understand, and are capable of administering with skill and ease, that is, the laws of England, rather than the French laws, with which they will be utterly unacquainted. And, therefore, (independently of the intrinsic merit of the English laws, and their superiority to the French laws in other points besides the protection of personal liberty and the trial by jury, of which I do not pretend to be a judge;) it will contribute to the due, regular, and expeditious, administration of justice in the province, that the laws, by which it is to be govern'd, should be, as much as possible, the English laws, and consequently that the French laws should be continued in it upon only a few subjects, in which they were judged to be peculiarly necessary to the happiness and satisfaction of the Canadians. And to this we may add, that the more the Canadians become acquainted with English laws, customs, and manners, the more they will be attached to the English government, and the less will they be disposed to return to that of France. And, therefore, upon the whole, it seems highly expedient that the English law should be again established as *the general law* of the province,

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in civil matters as well as in criminal, except upon a few subjects, concerning which it may be thought necessary for the satisfaction of the Canadians, to continue the use of the French laws.

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A short Review of the principal Clauses of the Quebeck-act, shewing that it is by no Means an Act of Indulgence towards the Bulk of the French, or Canadian, Inhabitants of that Province.

**I**T has often been matter of surprize to me to hear the Quebeck-act defended by its patrons as a measure proceeding from a spirit of indulgence towards his Majesty's new, or French, subjects in the province of Quebeck, and calculated to gain their affections, and engage their gratitude to government for deviating so far from its usual maxims in order to give them satisfaction. For to me it appears to be the reverse of all this, and to be fitted to offend and alarm them in a high degree, and diminish the respect and gratitude, which they had before entertained for the favours which they had till then received and enjoyed.

enjoyed under the British government. And we have seen, from their behaviour in the course of the last summer, that it has had this effect upon them; since they let a small body of the troops of the united, or revolted, provinces take possession of the province without any resistance from them, when, if they had been well-pleas'd with the last arrangement of the province by the Quebec-bill, they might easily have made head against them, and driven them out of the province. But, like the Romans, on I forget what occasion, when dissatisfied with the treatment they received from their patrician magistrates, *vincti se patiebantur*. Now, that it was reasonable to expect, that the Quebec-act would be thus disagreeable to them, will appear by the following short examination of its principal contents.

In the first place we will consider the operation of this act with respect to religion; on which subject it is asserted by its patrons to be peculiarly indulgent to the Canadians.

Now, with respect to religion, the Quebec-act produces the two following changes in the condition of the province. In the first place it gives the Roman-catholick priests a legal right to demand their tythes from their Roman-catholick parishioners, which they had not had till then ever since the conquest of the province by the British arms. This compulsion

pulsion upon the people to pay their priests the tythes is not agreeable to them: they were better pleased with the option they before enjoyed, of paying them, or not paying them, as they liked best.

As to the mere toleration of their religion, with the use of their churches for the performance of divine service according to the church of Rome, they had it in the amplest manner possible before the late act: so that the late act could do them no good in this respect, but only super-added to this perfect toleration the disagreeable compulsive obligation to pay their priests the tythes. There is, therefore, no kindness shewn to the Canadians in this first provision of the Quebec-act with respect to religion. See above in pages 147---152, and 315, 316, 317---321.

The second provision of the Quebec-act with respect to religion, is to take away the distinction between protestants and papists with respect to the capacity of holding places of trust and profit in the province. The inhabitants of that province may now be justices of the peace, judges, and members of the legislative council, and even may hold military commissions, without taking any of the protestant tests, not even the oath of supremacy. An army of papists, commanded by popish officers, may now be lawfully raised in the province

vince of Quebeck, whenever his Majesty shall think proper, supposing it to be true (as some eminent lawyers are reported to have lately asserted,) that the king may legally maintain as many troops as he pleases in the dependant dominions of the crown of Great-Britain, that lie without the realm, or island of Great-Britain. And, if this is not true, it will still be lawful for his Majesty to raise a popish army in Canada in all those cases (whatever they may be,) in which it would before the said act have been lawful to raise a protestant army there. This is what king James II's parliament refused to consent to his doing in England, notwithstanding their great devotion to him in other particulars, and notwithstanding they had been elected during the time that many of the cities and boroughs, by which they were chosen, were governed by the magistrates who had been set over them in the last years of Charles II's reign, when they had been new-modelled according to the pleasure of the court. This parliament gave king James a much larger revenue than had been enjoyed by his predecessor, king Charles II; and it attainted the duke of Monmouth without a trial: but it would not consent to abolish the test-act and put the sword (that most important trust,) into the hands of papists. At this is now made practicable in Canada by the late act, supposing it to be lawful for the king to raise any troops at all in that province.

vince. And the Canadians have entertained an opinion, that it was the design of government to raise a body of troops amongst them to be employed in the invasion of the neighbouring English provinces. Now, this second provision of the Quebeck-act with respect to religion, whereby papists are rendered capable of holding places of trust and profit, is disagreeable to the bulk of the Canadians on the four following accounts:

In the first place, it makes an opening for their own noblesse, and other former superiours, to come again into places of authority over them, to be their judges, justices of the peace, &c. This they are alarmed at, because they like the behaviour of the Englishmen, who have held those offices of magistracy over them for these fifteen years past, much better than that of their own former superiours; having found the English magistrates to behave towards them with a greater degree of impartiality, mildness, and moderation.

Secondly, they are afraid, that they shall be made to serve as soldiers under their said former superiours, and thereby be brought under a still greater degree of subordination to them, than if they are made subject to their power only in the capacity of civil magistrates. Of this aversion to serve as soldiers under their own seigniors and noblesse we have seen an example



example in the answer made by the Canadians of the feigniory of Terrebonne to captain Hamilton, " That, if their services were wanted as soldiers, they desired to have English officers to command them, and that they would follow such officers to the world's end." See above, pages 73 and 74. This objection to the Quebeck-act, as being likely to bring them again into subjection to their nobleſſe in a military capacity, is of the ſame nature with their firſt objection to it, which ariſes from the danger to which it expoſes them of falling again under ſubjection to the ſame perſons in a civil capacity: but it holds in a much higher degree, inasmuch as a military ſubjection to perſons they do not like, is more to be dreaded than a ſubjection to them only in a civil capacity.

Thirdly, they obſerve, that a great deal of money is diſtributed to their nobleſſe and other favourites of government, in the form of ſalaries, or penſions; ſuch as the ſalaries of £. 100 *per annum*, to the 23 members of the legislative council; the half-pay to the officers who ſerved againſt the Indians in the year 1764; the ſalaries of £. 500 a year each, to three judges at Montreal, and the like to three judges at Quebeck, (inſtead of £. 200 a year each, which the judges of thoſe places, who were then but four in number, received before the late Quebeck-act,); the large ſalary of £. 1200 a year  
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to the chief justice of the province, though they know that very few of their civil causes are decided in his court; the salary of £.600 a year to the Lieutenant-governour, notwithstanding the governour's residence in the province; and other the like augmentations of the publick expence of the province. And this increase of the publick expence of the province, together with that of the pay of the officers of the body of Canadian troops, which they suppose it to be the intention of government to raise amongst them, they apprehend will ultimately be raised upon them hereafter by further taxes, to be imposed for that purpose; not imagining that Great-Britain will continue to bear much longer so unnecessary a burthen on her own revenue. This apprehension touches them in a tender point, and has caused them to make the exclamation mentioned in page 99. See above in pages 98, 99 -- 102, 103, 104 --- 370 --- 378.

In the fourth place they dread the being obliged to serve as soldiers, and made to take a part in the present civil war in America. This they dread, not only on account of their aversion to being commanded by their own noblesse and seigniors, but in itself, even tho' they should be commanded by English officers; because they well know, that, if they should once be brought to act offensively against the inhabitants of the English provinces, they

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will ever after be marked out by those inhabitants (whom they know to be much more numerous and powerful than themselves,) as the objects of their hatred and revenge. This they justly dread as the greatest misfortune that can befall them; and therefore they dislike the clause in the Quebec-act, which enables papists to hold military commissions, inasmuch as it seems calculated to expose them to this evil by making it legal for the government to raise regiments among them to be employed against the other colonies. See this matter more fully considered above, in pages 238---243.

For these four reasons the aforefaid clause of the Quebec-bill, which enables papists to hold places of trust and profit in the province, (and which, one would naturally think, should be agreeable to the Canadians,) is, in fact, agreeable only to the few persons in the province, who either have obtained, or hope to obtain, such places in it; but is alarming and disgusting to the great body of the Canadian people.

Of the effect of the Quebec-act with respect to the laws of the province.

I come next to consider the operation of the Quebec-act with respect to the laws of the province. Now the change produced by this act with respect to the laws of the province, is to abolish the English laws, and revive the French laws *in all matters of property and civil rights*. By these very general words it has

has been understood in the province, that not only the laws relating to private property, (such as the tenure, alienation, and descent of land, and the distribution of the goods of persons who die intestate, and the like,) but those relating to the powers of government and the protection of liberty, were to be the same that were in use in the time of the French government; and consequently that the English laws relating to the writ of *Habeas corpus*, and the petition of right, and the trial by jury in civil actions, were abolished. This was by no means agreeable to the bulk of the Canadian inhabitants of the province, any more than to the British settlers in it, they having greatly relished the ease and quiet, and security, and impartiality in the administration of justice, which they had experienced during the ten years that the English laws had been established in the province. They dreaded a return to their former state of subjection to the officers of government, and to their own noblesse and seigniors, under which they had laboured in the time of the French government. Amongst other parts of the former French law, which they supposed to be revived in the province by this clause, they reckoned the laws relating to the manner of raising the militia: insomuch that, soon after the *Quebeck-act* was known in the province, a great number of very young men entered hastily into the married state, on purpose to avoid being compelled to serve in

the militia; from which obligation, it seems, by the laws which were observed in the province in the time of the French government, married men were exempted. And thus the revival of the French laws in all matters of property and civil rights, (which one would, at first sight, have thought would have been agreeable to the Canadians,) has occasioned a great alarm and terrour throughout the province.

Of the effect of the Quebeck-act with respect to the legislature of the province.

In the last place, we must consider the legislature established in the province of Quebeck; which is a council consisting of 23 members, partly protestants and partly Roman-catholicks, appointed by the king, and removable at his pleasure, or even at the pleasure of the governour, in case his Majesty shall please to delegate to him the power of suspending and removing them, there being no clause in the Quebeck-act to prevent his doing so. Now, this measure is in some degree disagreeable to the Canadians, more especially as it is accompanied with an allowance of a salary of £.100 a year to each of the said 23 counsellors, which the Canadians apprehend they shall ultimately be obliged to pay. Otherwise it must be confessed, that the bulk of the Canadian freeholders in the province, (though they are very much attached to the English laws, or have been greatly delighted with that ease and freedom which they have enjoyed since those laws were

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were introduced in the province, and which they consequently ascribe to the introduction of them, yet) are not very solicitous about the constitution of the body of men in whom the power of making laws shall be vested. Only I believe, they would chuse it should be composed of Englishmen rather than Frenchmen, as they esteem the former to be more moderate and equitable, and also wiser, and better acquainted with the nature of government, than the latter. But they are not very desirous of having an assembly of their own chusing vested with this authority rather than a council nominated by the king: and for this plain reason, that they have not much reflected on the subject. I speak of them, as they were about seven years ago. For it is not unlikely that, by this time, they may have been instructed in the great advantages of an elective assembly by the English Americans, who have invaded the province, and by the ingenious and diligent emissaries, whom the said English Americans had sent into the province, before they ventured to invade it, to prepare the Canadians to admit them into it as their friends and deliverers, instead of opposing them as their enemies: so, that it is possible they may now be disposed to prefer the English mode of government by an assembly, to the French mode of government by a *conseil supérieur*, or a legislative council. And even seven years ago, when the bulk of the Canadian freeholders were (thro' their

their ignorance) pretty indifferent, whether they were governed by the one legislature or the other, there were several Frenchmen in the towns of Quebeck and Montreal, amongst the lawyers and notaries, and merchants, and other people in trade there, who preferred the English mode of government, by an assembly chosen by the people, to the government of a legislative council, provided that Roman-catholicks should not be excluded from sitting in such assembly. In short, almost all those persons amongst the Canadians, who knew what an assembly was, and had at all considered the subject of government, did, even at that time, prefer an assembly to a legislative council, provided they could be admitted to have seats in the assembly, though the bulk of the freeholders of the province were, from their ignorance, rather indifferent about the matter. *Ignoti nulla cupido.* See the Account of the Proceedings, &c. in pages 171, 172, --- 179.

But this clause in the Quebeck-act, by which the whole power of making laws is put into the hands of a council of 23 persons nominated by the crown, has greatly shocked the English inhabitants of the province; who, from their considerable numbers, (having been found, by an enumeration made since the Quebeck-act, to be no less than 3000 persons) and from their carrying on three quarters of the trade of the province, and the great influence they have over the bulk of the Canadian freeholders,

holders, who consider them as their friends and protectors, are in truth the most important and considerable body of people in the province. Now, this respectable part of the inhabitants of the province are full of indignation at the Quebeck-act for depriving them of their hopes of being governed by an assembly of the people, in pursuance of the king's promise to them in the proclamation of October, 1763, which they now consider as never likely to be accomplished. And experience has shewn, that it was not agreeable to good policy, any more than to justice, to adopt a measure that was likely so highly to disgust them.

And the bad policy of this measure must appear in the stronger light, when we reflect that some of the leading members of this respectable, and, I may say, formidable, body of English settlers in the province, had, before the passing of the Quebeck-bill, declared a willingness to acquiesce in the establishment of a legislative council in the province *for a few years only*, provided it was constituted in the manner set forth in the draught of an act of parliament for that purpose, which is recited in the *Account of the proceedings*, &c. from page 50 to page 74, so as to consist of thirty-one members, who should be independent of the governour, though not of the king, and who should be subject to certain checks and restrictions as to their legislative proceedings, which were likely to prevent  
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any great abuses of their power. It is really surprizing, that, when such a plan of a legislative council (which is far enough from being equal, in point of freedom, to an assembly of the people!) was known to be likely to be acquiesced in by those inhabitants of the province who were most desirous of having an assembly, the government should have thought fit to reject it in favour of a legislative council of so very dependent a constitution as that which is established by the Quebeck-act; in which the number of members, instead of being fixed at thirty-one, is variable at the pleasure of the crown between the lesser numbers of twenty-three and seventeen; and in which all the members may be papists, if his Majesty shall so think fit; and none of them are required to have any landed property in the province; and all of them have pensions, or salaries, from the crown, of £.100 a year each; and all of them may (for aught the act says to the contrary,) be removed, or suspended, not only by the king, but also by the governor, if his Majesty shall please to delegate to him his own power of so removing and suspending them; and that they should have established this council, with all these objections to it, not for a few years only, but indefinitely, so as to remove from his Majesty's subjects in that province all hopes of seeing an assembly erected in the province in pursuance of the royal promise in the proclamation  
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tion of October, 1763. It surely must have been the intention of the patrons of this act to keep the province of Quebeck, (which it at the same time extends over more than half North-America,) in a very great degree of subjection to the crown!

It is worth while to observe the extent of the powers of this council. They may, with the king's subsequent consent, make and unmake all sorts of laws, excepting laws of taxation. They may abolish the English criminal law, which is established in the province by another clause in this act of parliament, but made subject to such alterations as the Governour and this council shall cause to be made therein; and they may introduce the French criminal law in its stead: ---- they may establish the punishments of flitting the nose, branding on the cheek, or breaking on the wheel, or any other punishments they shall think fit: --- they may establish the Roman-catholick religion more compleatly than the act itself has done, by passing an ordinance to oblige the protestant as well as the popish inhabitants to pay the Romish priests the tythes: ---- they may even make penal laws against the protestants, and establish the writ *de Hæretico comburendo*: ---- they may establish letters *de cachet*, or the power of arbitrary imprisonment, by an express law, under pretence of providing for the publick safety, and checking and defeating the treacherous practices of

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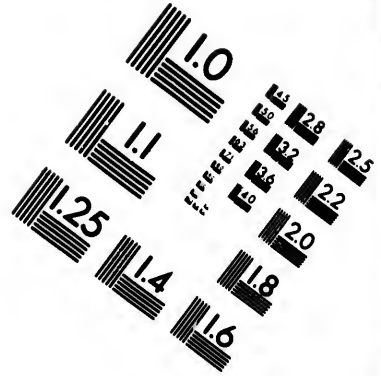
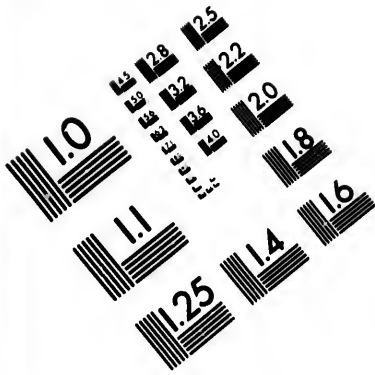
conspirators and spies. All these things they may do by virtue of these few significant words in the said act of parliament, to wit, "*which council, so appointed and nominated, or the major part thereof, shall have power and authority to make ordinances for the peace, welfare, and good government, of the said province, with the consent of his Majesty's governour, or, in his absence, of the Lieutenant-governour, or commander in chief for the time being;*" in which clause the usual restriction which is inserted in all the American charters and commissions to Governours, to wit, *that the said ordinances shall not be repugnant to the laws of England,* is not inserted.

I readily allow, that it is not probable that the governour and the said legislative council should make such mischievous ordinances as those just now mentioned: and I am confident that, if they did make such, his Majesty would disallow them by his orders in his privy council. But this is but a precarious situation for British subjects to be placed in, who have been used to live under a government in which it is not only improbable, but impossible, that such laws should be made for them by the crown, or any persons appointed by it, without the consent of their own representatives in parliament. It is only this latter situation that can properly be considered as legal and British freedom, and as what has been promised to his Majesty's subjects residing in the province  
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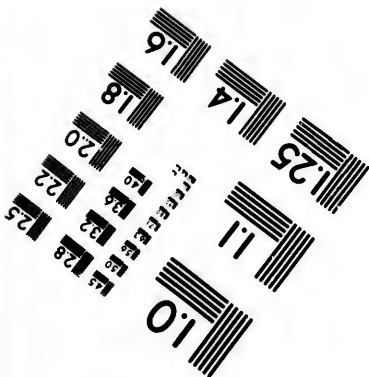
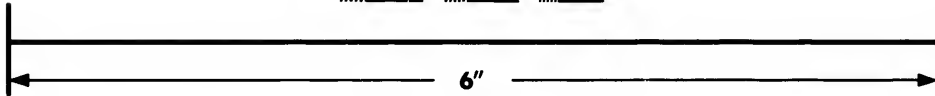
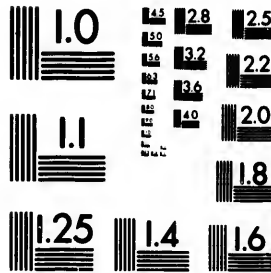
of Quebeck by his royal proclamation of October, 1763. If, therefore, that province is to be governed by a legislative council, the legislative powers delegated to that council by the British parliament, ought to be restrained in such a manner that they shall not be able to make any such mischievous laws as those above-mentioned, or to abolish, or in any degree abridge, the laws concerning the writ of *Habeas corpus*, and the protection of personal liberty, and the trial by jury, or any other of those important privileges of Englishmen which may justly be considered as having been granted to the inhabitants of the province by the aforesaid proclamation by the assurance therein given them *of the enjoyment of the benefit of the laws of England*. And for this purpose some such restrictive provisos as those mentioned above in pages 232, 233, 234, ought to be inserted in the act which confers on them their legislative authority.

Till such restrictions are made to the legislative powers delegated by the late act to the governour and council of Quebeck, it may justly be compared to the statute of the 31st year of the reign of king Henry VIIIth, cap. 8, which gave to the king's proclamations the authority of acts of parliament. For it really goes beyond that statute in the power it vests in these servants of the crown. For, according to that statute, the king could not, by his proclama-





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tion, repeal any of the laws then in being, nor make any law affecting men's inheritances, offices, or possessions, nor make any new capital crime, except in cases of heresy: and the punishments, by which obedience to his proclamations was to be enforced, were to be only imprisonment and fines, which were to be inflicted in pursuance of judgements to be passed upon informations brought before certain great officers of state enumerated in the act, or at least before half the said officers, in the Star-chamber. Whereas by the late Quebeck-act the power of making and repealing all sorts of laws in the said province, and enforcing obedience to them by all sorts of punishments, is vested in the governour and council of the province, with the subsequent assent, or allowance, of the king. That statute of Henry VIII. was repealed, with many other severe and oppressive statutes, in the first year of the reign of king Edward VI. under the administration of the good duke of Somerset, that young king's uncle, who was for a few years protector of the kingdom, and by his wisdom and zeal in the reformation of religion, and the establishment of civil liberty, during the continuance of his power, deserved and obtained the esteem and affections of the English nation in a very high degree. May some minister of state, of similar principles with that good man, in like manner recommend himself to the good affections of his fellow-subjects both  
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in England and America, by procuring the repeal of the Quebeck-act!

Hitherto I have considered the Quebeck-act only as it affects his Majesty's subjects, both French and English, in that province itself; and I have endeavoured to shew that, in that view only, it is highly expedient to repeal it. But, if we consider the effect of it with respect to the other American colonies, the necessity of repealing it will appear still stronger. For it seems to have alarmed those colonies more than any other act of parliament that has yet been passed, and, together with the Boston-charter act, to have been the principal cause of the present universal resistance in those colonies to the authority of the British parliament. The Boston-charter act has made them consider all the privileges granted them, both by that and all the other charters in America, as precarious and uncertain; since the said charters are liable thus to be altered, taken away, or new-modelled, at the pleasure of the British parliament, without a hearing of the parties, or a charge and proof of the misuser of the powers and privileges contained in them. And the Quebeck-act has carried the alarm still further, and made the American colonies tremble even for their assemblies, and suspect that the British parliament, if they should submit to its authority, would totally annihilate those popular legislatures, and establish  
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legislative councils in their stead, as they have done in the province of Quebeck. This and the apprehension, that their back-settlements would be invaded by a popish army from Canada; and that the principal design of the Quebeck-act was to enable the king to raise such an army there, and (by means of the influence of the Romish priests and the noblesse,) to keep the Canadians in a disposition to enlist in it, and to be so employed against them, seem to have completed the destruction of all their confidence in the British parliament, and confirmed them in their resolution of resisting its authority. For otherwise it is hardly to be supposed, that the accounts which we have repeatedly received from persons of character and experience in America, that a great number of persons of weight and property there were friends to the authority of the British parliament, and would, when properly supported by a respectable body of troops, declare themselves to be so, should prove so intirely false and groundless. It is hardly possible to conceive that the persons, who gave these accounts, should have been so intirely mistaken in their judgements and opinions of the sentiments of the Americans: and still less ought we to imagine that they meant to impose upon government, and bring on the present most destructive war. We must conclude, therefore, that their accounts of the sentiments of the Americans were true in the year 1772, and that *till that time* there were many persons in America, who  
 (notwithstanding

(notwithstanding the claim of the British parliament to the right of imposing taxes on its inhabitants, and their exercise of that right in the continuance of the trifling duty upon tea,) were friends to Great-Britain, and averse to any measures of resistance to the parliament's authority; though they were not disposed expressly to acknowledge its right to tax them. But, upon the passing of the Boston-charter act and the Quebec-act in the year 1774, (by the former of which their charter-rights were rendered precarious, and by the latter they were induced to suspect that even their assemblies would soon be taken from them, if the authority of parliament was allowed to be legally binding on them,) it seems probable that these friends of government, or Great-Britain, thought it necessary to change their conduct, and go over to the more violent party, who were disposed to resist the authority of parliament by force of arms. And it is natural to suppose, that the most loyal of these friends to Great-Britain have reasoned, ever since that melancholy æra in the politicks of Great-Britain, in some such manner as the following:

“ We have hitherto been engaged in a dispute with our mother country, not concerning the existence of our assemblies, nor the free and full exercise of their legislative powers for the benefit of their respective colonies, but only concerning their subordination to the supreme legislature of the whole

“ whole British empire, the Parliament of  
 “ Great-Britain. The members of that great  
 “ legislature have insisted, that the assemblies  
 “ of the American provinces are of the na-  
 “ ture of the common-councils of the corpo-  
 “ ration-towns in the island, or kingdom, of  
 “ Great-Britain; which have a local and infe-  
 “ rior species of legislative authority, or, as  
 “ it is expressed in the American charters and  
 “ commissions; an authority to make laws for  
 “ their own good government, not repugnant  
 “ to the general laws of England; and which  
 “ are known by the name of bye-laws; but  
 “ without interfering in the least with the  
 “ superior authority of the parliament, which  
 “ is the supream and general legislature of the  
 “ whole nation, and has power to bind all the  
 “ subjects of the crown in every part of its  
 “ dominions. And we, the sober and loyal  
 “ party in America, (whom our brisker coun-  
 “ trymen have stigmatized with the name of  
 “ *Tories*; on account of our attachment to  
 “ Great-Britain,) being convinced by the force  
 “ of the reasons alledged in that behalf, and  
 “ desirous of maintaining our union with Great-  
 “ Britain in the most perfect manner, have  
 “ acknowledged the justice of this pretension;  
 “ and have declared ourselves to be bound in  
 “ duty, and willing in fact; to obey the su-  
 “ pream legislative authority of the parlia-  
 “ ment; though we have wished at the same  
 “ time, that they would forbear to use it for  
 “ the

“ the purpose of imposing taxes on us, and  
 “ leave that single and delicate business to be  
 “ transacted by our own assemblies, as it had  
 “ always used to be till the unfortunate stamp-  
 “ act in 1764. These have been our mode-  
 “ rate and friendly sentiments towards Great-  
 “ Britain, though a more clamorous and vio-  
 “ lent party among us has inflamed the people  
 “ with notions of a very different kind, and  
 “ has led away a majority in our assemblies to  
 “ declare, that they are not subordinate in  
 “ any respect to the British parliament, but  
 “ perfectly co-ordinate with it, and equal to  
 “ it in authority within the limits of their re-  
 “ spective provinces. These pretensions we  
 “ are forced to disapprove; and have, from  
 “ time to time, expressed our disapprobation  
 “ of them, as far as the over-bearing spirit of  
 “ the other party, (who have engaged the com-  
 “ mon people on their side,) has permitted us  
 “ to do so; because we were of opinion, that  
 “ these high pretensions were not only void  
 “ of foundation in truth and reason, but that  
 “ they were contrary likewise to good policy,  
 “ as they have an immediate tendency to  
 “ split the dominions of the crown of Great-  
 “ Britain into so many separate and independ-  
 “ ant states; and destroy that happy union  
 “ and harmony that has hitherto subsisted be-  
 “ tween them. But we had never yet ima-  
 “ gined, that Great-Britain had begun to envy us  
 “ the enjoyment of our assemblies themselves;

O o o

“ and

“ and to wish to have us governed intirely by  
 “ officers of the crown, without any share in  
 “ the appointment of the legislatures of our  
 “ respective provinces. But now we have  
 “ reason to entertain this new and alarming  
 “ suspicion. For an act of parliament is lately  
 “ passed, in direct opposition to the king’s  
 “ proclamation of October 1763, (which we  
 “ had always looked upon as a sacred instru-  
 “ ment, that was binding on the king and  
 “ nation, and could not be repealed without  
 “ a breach of the publick faith, but which  
 “ this act has boldly rescinded and annulled  
 “ by exprefs words;) an act of parliament is  
 “ passed, to *establish*, instead of *tolerating*, the  
 “ popish religion in the province of Quebeck;  
 “ and to revive the French laws there in all  
 “ matters of property and civil rights; and,  
 “ consequently, to resume, from both the  
 “ French and English inhabitants of the pro-  
 “ vince, the grant that had been made to them  
 “ by the said proclamation, of the English  
 “ laws concerning the writ of *Habeas corpus*,  
 “ and the enjoyment of personal liberty, and  
 “ concerning the trial by jury in all civil actions,  
 “ and of divers other beneficial laws of Eng-  
 “ land; ---- and to establish, instead of an  
 “ assembly, (which had been promised them  
 “ by the said proclamation as soon as the state  
 “ and circumstances of the said province would  
 “ permit,) a legislative council composed of  
 “ persons nominated by the crown; and which  
 “ is

" is not established for only a small number of  
 " years, but is designed (for aught that appears  
 " to the contrary in the act,) to be the perma-  
 " nent mode of government for that province to  
 " all future generations;---and lastly, (which is  
 " a matter that concerns us more nearly than all  
 " the rest,) to enlarge the boundaries of the pro-  
 " vince of Quebeck so as to take in the five great  
 " lakes and all the immense and very fruitful  
 " country contained between them and the ri-  
 " vers Ohio and Mississippi, and which lies at the  
 " back of our provinces; with a view, as it  
 " should seem, that this new and favourite  
 " mode of government, together with the Ro-  
 " man-catholick religion (now also, to all ap-  
 " pearance, become an object of favour with  
 " Great-Britain,) should prevail throughout all  
 " that vast country. What then can we con-  
 " clude from such an act of parliament, (the  
 " passing of which would ten years ago have  
 " been thought an impossible event;) but  
 " that Great-Britain is now governed by the  
 " counsels of a set of men, who, going far  
 " beyond the late Mr. Grenville's sentiments  
 " in their plan of controuling these provinces,  
 " intend not barely to reduce our assemblies  
 " to their antient and constitutional condition  
 " of inferiour legislatures, subordinate to the  
 " supream authority of the British parliament,  
 " but absolutely to deprive us of them, and  
 " govern us by legislative councils appointed by  
 " the crown, in imitation of that which they  
 " have

“ have just now established in this immense  
 “ new province, which they have erected at  
 “ the back of our settlements? ---- And if  
 “ this be their design, it behoves us English  
 “ Americans, if we deserve the name of Eng-  
 “ lishmen, and set any value on the liberties  
 “ we now enjoy under the protection of our  
 “ assemblies, to unite with heart and hand in  
 “ defence of them. In such a cause we are  
 “ ready to venture any thing, even life itself,  
 “ the continuance of which cannot be plea-  
 “ sant to us after the extinction of our liberty.  
 “ We must, therefore, now at last give up the  
 “ pleasing hopes which we, the sober and  
 “ loyal party in America, (who have acknow-  
 “ ledged the authority of the British parlia-  
 “ ment over us,) have hitherto entertained of  
 “ seeing an amicable conclusion of our pre-  
 “ sent disputes with our mother-country, since  
 “ she has so far forgot her parental affection  
 “ towards us as to meditate to reduce us to a  
 “ state of political slavery: And we must hence-  
 “ forwards unite ourselves with our more vio-  
 “ lent brethren to carry on their schemes of  
 “ independance on Great-Britain; schemes  
 “ which *they* have adopted from ambition, but  
 “ which we shall accede to from the humbler,  
 “ but not less cogent, motive of necessity, from  
 “ a sense of the impossibility of preserving our  
 “ former degree of liberty without it, after  
 “ the disposition which Great-Britain has ma-  
 “ nifested with respect to us by this surprizing  
 “ act for the government of Quebeck.”

Such



Such seem to have been the sentiments of the most moderate English Americans upon the passing the late Quebeck bill; and, in consequence of them, the resistance to parliamentary authority is become almost universal, hardly any persons among them having, since that time, appeared to have any inclination to acknowledge and support that authority, except the very officers of government in America, who hold lucrative employments there at the pleasure of the crown, and a few of the clergy of the church of England, who are eagerly desirous of having a protestant bishop sent to America, and who, probably, have no hope of seeing that favourite measure accomplished without the interposition of the authority of the British parliament. This being the state of things, it seems evident, that all hopes of reconciliation between Great-Britain and her colonies, upon any lasting or cordial terms, are at an end, unless this act for regulating the government of the province of Quebeck shall be repealed. And, therefore, if we wish to retain the colonies in America, as members, or parts, of the dominions of the crown of Great-Britain, in any capacity, (either as subordinate civil societies, or corporations, subject to the controul of the British parliament, or as separate states of fellow-subjects of the same king, having legislatures of their own co-ordinate with the parliament, or legislature of Great-Britain,) it seems to

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to be a measure, not merely of prudence, or expedience, or preferable choice, but of absolute necessity, to repeal this most obnoxious act of parliament, and pass another in its stead, which shall be more agreeable to the promises contained in the royal proclamation of October 1763, and the general principles of the British constitution.

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### Of the Power of imposing Taxes in the Province of Quebeck, since the late Act for regulating its Government.

**T**HOUGH the act for regulating the government of the province of Quebeck expressly excepts from the power of making laws, which it delegates to the Governour and council to be established in it, the power of laying any taxes, or duties, within it; and though the British parliament, at the same time that it passed this act for the government of that province, passed another act for imposing certain taxes and duties on spirituous liquors imported into it, (which I believe to be both moderate and judicious, and against which no complaints have been made in the province,); yet there is some reason to apprehend that the said act for regulating the government of the province of Quebeck may one day or other be considered as having vested the power of imposing taxes on  
the

the inhabitants of that province in the crown alone, without the concurrence of the parliament. If this should be the effect of the said act, I readily allow that it was done inadvertently, and that it is probable the promoters of the act had no such effect in view at the time of passing it, but intended to reserve the power of imposing taxes in that province to the king and parliament conjointly. But still I think there is reason to apprehend that the act may be considered as having this operation. My reasons for thinking so are as follows.

The royal proclamation of October, 1763, related equally to all the four new governments which were then going to be erected in the countries that had been ceded to the crown of Great-Britain by the definitive treaty of peace concluded at Paris in the preceding month of February. These governments were those of Quebeck, East-Florida, West-Florida, and Grenada. And the same promises, of being immediately governed according to the English law, and of having the English form of colony-government, by a Governour, council, and assembly, established in them, as soon as their situation and circumstances would admit thereof, were made to them all. In the month of July in the following year 1764, the King issued letters patent under the great seal of Great-Britain, reciting, " That in Barbadoes, " and all the British Leeward islands, there  
" was

“ was a duty of four and a half per cent. paid  
 “ upon the export of goods,” and then pro-  
 ceeding to impose the like duty in the island  
 of Grenada in these words, “ Whereas it is  
 “ reasonable and expedient, and of importance  
 “ to our other sugar colonies, that the like  
 “ duty should take place in our said island of  
 “ Grenada, we have thought fit, and our royal  
 “ will and pleasure is, and we do hereby, by  
 “ virtue of our prerogative royal, order, direct,  
 “ and appoint, that an impost, or custom, of  
 “ four and a half per cent. in specie shall,  
 “ from and after the 29th of September next  
 “ ensuing the date of these presents, be raised  
 “ and paid for and upon all dead commodities,  
 “ of the growth and produce of our said island  
 “ of Grenada, which shall be shipped from  
 “ the same, in lieu of all customs and import-  
 “ duties hitherto collected upon goods imported  
 “ and exported, into and out of, the said island,  
 “ under the authority of his Most Christian  
 “ Majesty; and that the same shall be col-  
 “ lected.” This duty of four and a half per  
 cent. was accordingly collected for some years  
 in the island of Grenada by virtue of these  
 letters patent, without either an act of the British  
 parliament or an act of the Governour, council,  
 and assembly of Grenada, to confirm them, not-  
 withstanding an assembly was called in that  
 island, and sat to do business in it, in the year 1765.  
 At last, in the year 1773, one Mr. Alexander  
 Campbell, a natural-born subject of Great-  
 Britain,

Britain, who had purchased a plantation in the island of Grenada in the month of March, 1763, and who had paid this duty of four and a half per cent. upon some sugars which he had exported from it, brought an action against Mr. Hall, the collector of the customs to whom he had paid it, to compel him to return it to him, as being money had and received by the said defendant Hall to his, the plaintiff's, use, it having been paid by the said plaintiff in pursuance of the said letters patent of July, 1764, which he contended to be illegal and void. The defendant Hall rested his defence upon the validity of the said letters patent; and the jury found a special verdict, stating the whole matter; of which the substance has been here related. And this special verdict was solemnly argued at the bar of the court of King's-bench, and judgement was given on it by the judges of that court on the 28th day of November, 1774, in favour of the plaintiff Campbell. Lord Mansfield, the chief justice of the said court, delivered the opinion of the court upon that occasion; which was to the following purport. He said, that the general question upon the special verdict was this, to wit, "Whether the letters patent of July, 1764, are good and valid to abolish the French duties, and, in lieu thereof, to impose the said duty of four and an half per cent. which is paid in all the British Leeward islands."

That upon this question the counsel for the defendant had contended that the said letters patent weré void, upon two distinct grounds.

In the first place they contended, that, if the king had issued these letters patent before his aforesaid proclamation of October, 1763, (in which he promised the inhabitants of the said island the enjoyment of the benefit of the laws of England and the English mode of government by a Governour, council, and assembly,) they would nevertheless have been illegal and void; for that the king can at no time exercise such a legislative authority over a conquered country.

And in the second place they said, that, if the king had had sufficient authority before the issuing of the said proclamation of October, 1763, to do such a legislative act, yet that by the said proclamation of October, 1763, he had divested himself of that authority.

Lord Mansfield declared that all the judges of the court were of opinion with the plaintiff's counsel upon this latter point, to wit, that the king had by the said proclamation of October, 1763, divested himself of this legislative power; and therefore they gave judgement for the plaintiff. But he declared it to be clearly his own opinion, and did not intimate that any of the other judges differed from him upon that point,

point, " that in the interval of time between the cession of the island of Grenada to the crown of Great-Britain by the treaty of peace in February, 1763, and the proclamation in October, 1763, the king had a power of imposing the said duty of four and a half per cent. upon goods exported from the island of Grenada by virtue of his letters patent under the great seal; and consequently that, if the said letters patent for imposing the said duty had been passed before the said proclamation of October, 1763, instead of after it, they would have been legal and valid, and the judgement in that action must have been for the defendant.

Amongst other arguments, or rather authorities, in support of this royal prerogative of imposing taxes on the inhabitants of conquered countries, Lord Mansfield, in delivering the judgement of the court on the aforesaid occasion, mentioned the opinion of Sir Philip Yorke, (who was afterwards Lord Chancellor Hardwicke,) and Sir Clement Wearg, when they were attorney and solicitor general, upon a case referred to them by the privy council. This case was as follows. In the year 1722, the assembly of Jamaica being refractory, it was referred to Sir Philip Yorke and Sir Clement Wearg to consider what could be done if the assembly should continue to withhold all the usual supplies. Upon this they reported as follows: " That, if Jamaica was still to

“ be considered as a conquered island, the king  
 “ had a right to lay taxes upon the inhabitants:  
 “ but, if it was to be considered in the same  
 “ light as the other colonies, no tax could be  
 “ imposed upon the inhabitants but by an  
 “ assembly of the island, or by an act of par-  
 “ liament.” This opinion Lord Mansfield laid  
 great stress on, and adopted.

Now, if this opinion is true, I apprehend  
 that it will follow that it is at this time lawful  
 for the king by his letters patent under the  
 great seal to impose taxes on the inhabitants of  
 the province of Quebec, by virtue of that  
 clause in the late Quebec-act, in which it is  
 enacted, “ *that the said proclamation [of Octo-  
 ber, 1763], so far as the same relates to the  
 said province of Quebec, and the commission, &c.  
 be revoked, annulled, and made void, from and  
 after the first day of May, one thousand, seven  
 hundred, and seventy-five.*” For, since this pro-  
 clamations is hereby revoked with respect to the  
 province of Quebec, it seems naturally to  
 follow that the king's power with respect to  
 that province must, in all cases not provided  
 for by the said act, be the same as it was before  
 the said proclamation was published, and con-  
 sequently that it will extend to the imposition  
 of taxes upon the inhabitants of that province,  
 there being no provision in the said act con-  
 cerning the persons in whom the power of  
 laying taxes shall be vested, but only an ex-  
 ception



ception of it in the clause which delegates the power of making laws to the Governour and council of the province. And thus the late parliament will, by the late Quebeck-act, have, *inadvertently and by necessary inference*, conveyed to the crown alone a power of taxing all the inhabitants of the province of Quebeck, (which they also extended over more than half North-America,) at the same time as they, *deliberately and expressly*, conveyed to the Governour and council of the said province a power of making, with the subsequent assent of the crown, all sorts of laws in the said province, excepting such as relate to the imposition of taxes. This is one of many instances of the loose and negligent manner in which that most important act is drawn up.

Now, since this is the use which may one day be made of the aforesaid clause in the Quebeck-act, (which revokes the king's proclamation of October, 1763,) by means of the aforesaid opinion of Lord Mansfield upon the first point that was insisted on by the plaintiff's counsel in the aforesaid case of Campbell and Hall, it seems reasonable, in case the said Quebeck-act should not be repealed, but only amended, and the aforesaid proclamation of October, 1763, should not be revived in the said amending act, I say, it seems reasonable in such case to guard against this conclusion by an express clause that shall vest the power  
of

of imposing taxes on the inhabitants of the the said province, until an assembly of people shall be established in it, in the parliament of Great-Britain. With this view it would be proper to correct the second section of the draught of an act of parliament for establishing a legislative council in the province of Quebeck for only seven years, which is recited in the *Account of the Proceedings, &c.* from page 50 to page 74, (supposing that draught were to be adopted as part of an act of parliament for amending the present Quebeck-act,) in the following manner.

II. PROVIDED always, and IT IS HEREBY FURTHER ENACTED, that none of the said laws, statutes, or ordinances, shall in any degree tend to the imposing any duties, or taxes, on the inhabitants of the said province; and that, so far as any of the said laws, statutes, or ordinances, shall have any such tendency, they shall be utterly void and of no effect or authority whatsoever: and that, during the continuance of this present act, no duties, or taxes of any kind, shall be imposed on the inhabitants of the said province by any other authority than that of the parliament of Great-Britain. See the *Account of the Proceedings, &c.* page 63.

But, as the Quebeck-act is liable to such a number of very capital objections in almost every part of it, it is to be hoped that, when it  
next

next undergoes the consideration of parliament; it will not be amended, but totally repealed, and the king's proclamation of October, 1763, again revived with respect to that province, with such explanations and corrections as shall be judged necessary for the domestick happiness and satisfaction of the Canadians; agreeably to what has been said above in pages 436, --- 446. For there never, as I believe, was a written composition of any kind, that gave a juster handle to the application of Martial's satirical distich.

Emendare tuos, O Fescennine, libellos  
Non multæ possunt, *Una litura* potest.

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### A Proposal for a Reconciliation with the revolted Provinces of North-America, without exempting them from the Authority of the British Parliament.

IN the first place, to repeal the Quebec-act, and thereby re-establish the king's proclamation of October, 1763, with respect to the province of Quebec, and reduce the extent of the said province to what it was before the late Quebec-act; or, perhaps, (if it shall be thought necessary,

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necessary, upon a full inquiry into the matter by the testimony of sea-officers acquainted with Newfoundland and the gulf of Saint Lawrence, and the fisheries and trade carried on in those parts, and by the testimony of merchants acquainted with the same subjects,) to enlarge the former extent of the province of Quebeck, as settled by the proclamation of October, 1763, by the addition of the coast of Labrador, which by the said proclamation were made part of the government of Newfoundland: but by no means to put all the interior part of North-America into the province of Quebeck.

Secondly, After thus repealing the Quebeck-act, and reviving the king's proclamation of October, 1763, ~~and reducing~~ the province of Quebeck to a reasonable and moderate extent; capable of being governed by an assembly in pursuance of the promise in the said royal proclamation, To ascertain the laws of the province. This should be done by expressly mentioning and confirming the petition of right, the *habeas corpus* act, the bill, or declaration, of rights in the first year of king William and queen Mary, and perhaps a few other statutes that are singularly beneficial and favourable to the liberty of the subject, and then by confirming, in general terms, the rest of the laws of England, both criminal and civil, excepting the penal laws against the exercise of the popish religion, which should be  
declared

declared to be (what they have always been understood to be,) utterly null and void with respect to that province, and excepting also the laws relating to the tenure of land, the manner of conveying it, and the laws of dower and inheritance, at least with respect to the children of marriages already contracted, or which shall be contracted before a given future day, and declaring that upon these subjects the former French laws of the province should be in force.

But the laws of England which disqualify papists from holding places of trust and profit, ought still to be continued in the province, though the penal laws should be abolished; the former laws being not laws of persecution, but of self-defence. Yet the king might, if he pleased, extend his bounty to those people who signed the French petition, and to such other persons of the Roman-Catholick religion as he thought fit, by granting them pensions.

Also it would be proper to abolish the feignourial jurisdictions in Canada, for the satisfaction of the great body of the freeholders of the province. If this cannot be done consistently with justice and the terms of the capitulation granted by Sir Jeffery Amherst in September, 1760, without giving the seigniors a pecuniary compensation for the loss of these jurisdictions, (though I incline to think it might,) such pecuniary compensations ought to be

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given

given them. The expence of a week's extraordinaries to the army at Boston would be more than sufficient to make these compensations in a large and ample manner.

Thirdly, Having thus ascertained the laws of the province of Quebeck, it would be proper to provide for the convenient administration of justice in it, either by adopting the plan set forth above in pages 343,---359, or some other that shall be thought fitter for the purpose.

Fourthly, To provide a competent legislature for the province of Quebeck. The best legislature that could be provided for it, would, as I believe, be a protestant assembly chosen by the freeholders of the country, whether Protestants or Roman-Catholicks. The next best, I should be inclined to think, would be a legislative council consisting of protestants only, such as is proposed in the draught of an act of parliament contained in the *Account of the Proceedings, &c.* pages 50---74, with the corrections herein above mentioned in pages 232, 233, 234, and 486, to be established for only seven years; in which all the members should be made independent of the Governour; so as to be neither removeable nor suspendible by him upon any occasion whatsoever, though they might be removed by the king by his order in council. They should be thirty-one in number, or perhaps more; and should all sign  
the

the ordinances for which they gave their votes ; and should be paid forty shillings each, every time they attended the meetings of the council, in order to induce them to attend in considerable numbers ; as the justices of the peace in England are intitled to a pecuniary allowance for attending the quarter-sessions of the peace, and the directors of the East-India company for attending the meetings upon the affairs of the company, and the members of the House of Commons are intitled to wages from their constituents for attending parliament, though now they forbear demanding them. But they should receive no general salaries from the crown, not depending upon their attendances ; as such a practice can tend to nothing but to make them dependant on the crown, and contemptible in the eyes of the people. Next to such a legislative council, consisting of protestants only, a general assembly of the people, consisting of protestants and papists indiscriminately, seems to be the most proper legislature for the province. And to the establishment of such an assembly but few objections can now be made, since the English settlers in the province, on the one hand, have declared that they are willing to acquiesce in the establishment of such an assembly, and the king and parliament, on the other hand, have, (by passing the Quebeck-act and permitting Roman-Catholicks to hold all sorts of offices, seats in the legislative council of the province, judicial

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offices,

offices, and even military commissions,) declared that they consider the old opinion, "that Roman-Catholicks were not fit persons to be invested with authority under the British government," as ill-grounded with respect to the province of Quebeck. For certainly, if there is any hardship in excluding papists from holding places of trust and profit in the province, there is a still greater hardship in excluding them from being chosen members of an assembly of the province.

Fifthly, To repeal the Boston-charter act; and to pass a resolution in both houses of parliament, that, for the future, no charter of any American colony shall be taken away, or altered in any point, by the British parliament, without, either, on the one hand, a petition for that purpose to the two houses of parliament, or to the king's majesty, from the assembly of such colony, whose charter is proposed to be either taken away or altered, or, on the other hand, a suit at law by a writ of *scire facias* to repeal the said charter, regularly carried on in the court of Chancery in England, upon a charge of some abuse of the powers of the said charter by the people of such colony, or of some other misdemeanours committed by them, which may be a legal ground of forfeiture of the same, and a judgment of forfeiture pronounced in consequence of such suit after a full hearing of the same, and



and also a re-hearing in parliament of the charges in the said suit and of the proofs brought in support of them, and of the arguments which may be alledged both for and against the said colony by counsel, and an approbation and confirmation of such judgement of forfeiture by both houses of parliament in consequence of the said re-hearing of the whole matter.

Such a resolution of the two houses of parliament would give the Americans a strong moral assurance that the privileges granted them by their charters would not be lightly and wantonly altered for the future upon the hasty suggestions of men little acquainted with their history and condition, and whose notions of government are very different from their own.

Sixthly, To repeal the trial-act, for trying officers or soldiers, who shall be indicted for murder in the Massachusetts bay, in others of the American provinces, or in England. This act, I am persuaded, was intended only for the purposes of justice, and to procure a fair trial to the officers and soldiers who should happen to be indicted for actions done by them in the course of their duty as assistants to the civil magistrate in the execution of the laws, and not to screen them from punishment when they were really guilty of murder, or had occasioned the death of his Majesty's subjects  
in

in that province without such just and lawful cause. And I am further persuaded that, in fact, it would not screen them from punishment, provided the charge was supported by proper testimony; but that the said juries that should try these indictments, whether in England or America, would readily convict such officers and soldiers of murder, if they were really guilty of it, and proved to be so by sufficient evidence. But the difficulty of procuring the witnesses to the facts to come across the Atlantick ocean to give evidence concerning them is so great, that it may almost be considered as unsurmountable; and consequently this method of trying those offences may be reckoned to be impracticable, notwithstanding the spirit of justice and impartiality by which the juries would probably be governed. And for this reason the act ought to be repealed. However, as this act is only a temporary one, and will expire of itself in two years, it is a matter of much less consequence than the act for altering the charter of the Massachusetts bay and the Quebec-act. Those are the acts which have brought on this civil war, and which, I apprehend, must be totally repealed before peace can be restored.

Seventhly, To pass a resolution of both houses of parliament, that, for the future, no tax or duty of any kind, shall be imposed by authority  
of

of the parliament of Great-Britain upon his Majesty's subjects residing in those provinces of North America in which assemblies of the people are established; until the said provinces shall have been permitted to send representatives to the British parliament, excepting only such taxes or duties, upon goods exported out of, and imported into, the said provinces, as shall be thought necessary for the regulation of the trade of the said provinces; and that, when such taxes, or duties, shall be laid by the British parliament on any of the said provinces, the whole amount of the same shall be disposed of by acts of the assemblies of the provinces in which they shall be collected, respectively.

I do not mean on this occasion to recommend to the publick the admission of representatives from the American colonies into the British House of Commons; because I have observed a disinclination in both the contending parties to adopt a measure of this kind, which otherwise I should think the easiest and most natural method of reconciling and uniting them. But what I here propose is to give the Americans satisfaction and security, by declaring a resolution not to tax them by the authority of the British parliament, of which they have expressed so great a dread and aversion, and at the same time to save the honour and dignity of that supreme legislature of all the British dominions, by exhorting them,

them, not to give up their right and authority to tax the inhabitants of the American provinces, but only to forbear the exercise of it till they have taken a step towards the amendment of the constitution of their own body, which the most strenuous advocates for their authority acknowledge to be agreeable to equity, in case it is their intention to use that authority for the purpose of taxing America. For the late Mr. George Grenville himself, and others of the most zealous defenders of the rights of the British parliament, have acknowledged that such an alteration in the constitution of the British House of Commons by admitting into it a reasonable number of members for the American colonies, (agreeably to what was done a hundred years ago in the case of the bishoprick of Durham,) would be perfectly constitutional and equitable, and could not well be refused to the Americans, if they were to desire it, and to declare a willingness to submit, in consequence of it, to the authority of parliament in all things in the same manner as the inhabitants of Great-Britain. Until therefore an offer of this kind is made to the Americans and refused by them, it can be no derogation to the honour of parliament, but rather a proof of their equity and moderation, and therefore honourable to them, to forbear to exercise their authority over America in this delicate and dangerous business of taxation. And, as the people of Great-Britain  
seem

seem hardly more disposed to make such an offer than those of America are to accept it, this forbearance of the exercise of the authority of parliament may be continued for many years to come, perhaps for ever, without any loss of honour to Great-Britain, and with great joy and satisfaction to the Americans.

Eighthly, That all the quit-rents, and other royal dues, collected in the provinces of America, shall be appropriated to the maintenance of the civil governments in the same, and shall be employed in the payment of the salaries of the governours, and judges, and sheriffs or provost-marshalls, and coroners, and other officers of justice and civil government in the same, so as to lessen the taxes which it may be necessary for the governours, councils, and assemblies of the said provinces, to lay on the inhabitants of the same for the said purpose: and that a separate receiver and collector of the said quit-rents and other royal dues, be appointed by the several governours of the said provinces respectively in every separate province, who shall hold his said office during the pleasure of the governour of the province to which he shall belong, and his residence in the said province, and no longer, and who shall receive and enjoy such salary, or fees, or other emoluments, during his continuance in his said office, as shall be allowed by an act of the governour, council, and assembly of the said province. But the portions of the said

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quit-rents that shall be assigned to the governour, and judges, and other officers of civil government in the said provinces respectively, shall be such as his Majesty, in his royal wisdom, shall think fit to appoint.

Also it should be provided that no governour, judge, or other officer of the civil government of any such province, should receive any part of the salaries arising from these quit-rents, or other royal dues, during the time of his absence from the said province, or, after his return to the province, in consideration of his having held the said office during such absence; but that so much of his said salary, arising from the said quit-rents and other royal dues, as would have accrued to him in the said space of time, if he had resided during the same in the said province, shall be deemed to be forfeited by his said absence, and shall make a part of the publick treasure of the province, and be disposed of by the joint act of the governour, council, and assembly of the said province.

The amount of these quit-rents and other royal dues in America should be made good to his Majesty out of the sinking fund.

Ninthly, The offices of secretary of the province, clerk of the council, register of deeds and patents, or clerk of the inrolments of deeds and patents, provost-marshal, or sheriff, commissary

commissary of stores, receiver-general of the king's revenue, coroners, clerks, or registers, of the courts of justice, naval officer, collector of the customs, comptroller of the customs, and all other offices of the civil government in every province, should be given to persons resident in the province, to be executed by themselves, without a power of making deputies; and the fees to be taken by them should be settled by acts of the governour, council, and assembly of the said province in which they are holden; and they should be holden during the pleasure of the governour, or of the king, as his Majesty, in his royal wisdom, shall think fit, but should never be given by patents under the great seal of Great-Britain, to be holden during the lives of the patentees; and, much less, should they be granted in reversion: and they should be holden by separate officers, so that no two of them should be holden by the same person.

The present patentees of any of these offices should have compensations made to them for the loss of their patents by pensions for their lives payable out of the sinking-fund.

Tenthly, In the governments called royal governments, (which are carried on by virtue of the king's commission only, without a charter,) the councils of the said provinces should be made more numerous than they now are,

and

and should be appointed for life, or during their good behaviour. They now usually consist of twelve members, all of whom may be removed at the pleasure of the crown, and suspended from the execution of their offices by the governours of the respective provinces till the pleasure of the crown can be known. This renders them of little weight and consequence in the eyes of the people, and consequently of little advantage to the governour in supporting his majesty's authority, and preserving the peace of the province. It would, therefore, be proper to enlarge their number to at least 23 members, and, in the more populous provinces, to a greater number, (in Virginia, perhaps, to 43,) of whom at least 12 should be necessary to make a board, and do business, and to appoint them for life, or during their good behaviour, so that they could not be removed from their said offices without a charge of some misconduct that should be a sufficient ground for removing them from the said office, and a proof and conviction of the same in a trial by jury upon a writ of *scire facias* to repeal the patent by which they had been appointed to such office, or some other law-proceeding analogous to such writ. This numerous council should be the legislative council of the province, and should concur with the assembly of the people in making laws.

But,



But, for the executive part of government, the king might appoint a lesser council, consisting of not fewer than 12 persons, who should be a council of state to advise the governour in all those matters relative to the execution of the powers of his commission, in which he was directed by his commission to act with the advice of his council. And seven members of this council should be necessary to make a board, or do business. The members of this council should hold their places at the pleasure of the crown, as the king's privy-counsellors do in England; but should not be removeable, or suspendible, by the governour. They might either be the members of the greater, or legislative, council, or not, as his Majesty, in his royal wisdom, should think fit.

This measure, " of making the members of the legislative councils more numerous than they now are, and independant of the crown, in order to give them more weight and dignity in the eyes of the people, and thereby to render them more capable of being useful in the support of his majesty's government," is recommended by some of the warmest friends of Great-Britain in North-America; of which I will mention an instance or two. In the year 1774. a very sensible pamphlet was published for Thomas Cadell, in the Strand, intitled,

intitled, “ *Considerations on certain political transactions of the province of South-Carolina.*” This pamphlet has been generally ascribed to Sir Egerton Leigh, baronet, his majesty’s attorney-general for that province. But, who-soever the author of it may be, he appears to be a person well acquainted with the affairs of America, and more especially of that province, and a zealous friend to the interests of Great-Britain in America, and to the continuance of an amicable connection between the two countries upon the old footing of a subjection of them both to the authority of the British parliament. In pages 68, 69, 70, of this pamphlet there is the following passage: “ In my apprehension, it seems “ absolutely necessary that the numbers of “ the council should be encreased; and for “ this plain and obvious reason, because a “ body of twenty-four counsellors, for in- “ stance, appointed by the king from the “ first rank of the people, most distinguished “ for their wealth, merit, and ability, would “ be a means of diffusing a considerable in- “ fluence through every order of persons in “ the community, which must extend very “ far and wide, by means of their particular “ connections; whereas a council of twelve, “ several of whom are always absent, can “ have little weight, nor can their voices be “ heard amidst the clamour of *prevailing* “ numbers.

“ I think

" I think this body, acting legislatively,  
 " ought to be made independent, by holding  
 " that station during the term of their na-  
 " tural lives, and determinable only on that  
 " event, or on their intire departure from  
 " the province. But the same person might  
 " nevertheless, for proper cause, be displaced  
 " from his seat in council ; which regula-  
 " tion would, in a great measure, operate  
 " as a *check* to an arbitrary governour, who  
 " would be cautious how he raised a power-  
 " ful enemy in the upper house by a rash  
 " removal ; at the same time that the power  
 " of removal would keep the member with-  
 " in proper bounds. The life-tenure of his  
 " legislative capacity would likewise suffi-  
 " ciently secure that *independency* which is so  
 " necessary to this station, and so agreeable  
 " to the constitution of the parent-state. I  
 " know some folks will raise both scruples  
 " and fears ; but for my own part, I think  
 " without much reason : for if we attend to  
 " the workings of human nature, we shall  
 " find, that a certain degree of attachment  
 " commonly arises to the fountain from  
 " whence an independent honor flows. Op-  
 " position seldom settles upon the persons  
 " who are raised to dignity by the favour of  
 " the crown, it having so much the appearance  
 " of ingratitude, one of the most detested  
 " vices ; and it ever acts a *faint and languid*  
 " part,

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“ part, till a descent or two are past, and  
 “ the author of the elevation is extinct.  
 “ From this reasoning it seems tolerably  
 “ clear to me, that the legislator being for  
 “ life, and deriving his consequence from  
 “ the crown, will rather incline to *that*  
 “ *scale*; and it is not probable that his op-  
 “ position could in any instance be *rancorous*  
 “ or *factions*, inasmuch as, though his life-  
 “ estate is secure, he would not wish un-  
 “ necessarily to excite the resentment of the  
 “ crown, or exclude his descendants or con-  
 “ nections, perhaps, from succeeding after-  
 “ wards to such a post of honour and dis-  
 “ tinction in their native country: in short,  
 “ this idea seems to admit such a *qualified*  
 “ *dependency*, as will attach the person to  
 “ the side of the crown in that propor-  
 “ tion which the constitution itself allows,  
 “ and yet so much *real independency*, as  
 “ will make him superior to acts of mean-  
 “ ness, servility, and oppression. Whether  
 “ these sentiments are well founded, or  
 “ not, I submit to the impartial judge-  
 “ ment of my reader; what I principally  
 “ mean to infer is, that the happiness of  
 “ these colonies much depends upon a due  
 “ *blending* or *mixture* of power and depen-  
 “ dence, and in preserving a proper subordi-  
 “ nation of rank and civil discipline.” And  
 in pages 72, 73, of the same pamphlet is  
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the following passage: " I cannot close this  
 " subject without expressing my sincere con-  
 " cern, that such unhappy disputes divide  
 " mens minds, and distract the publick coun-  
 " cils of this country; and I have presumed  
 " to offer these considerations to the world,  
 " that the subject may be fully understood,  
 " and that this colony as well as others may  
 " judge of it with the greater ease and cer-  
 " tainty, by seeing every fact fairly stated and  
 " candidly discussed. But I must again re-  
 " peat, that twelve members of the council  
 " bear no kind of proportion to the numbers  
 " of the Lower House, which consists of  
 " forty-eight members: and what still adds  
 " to the defect is, that, as several of the  
 " council are frequently and necessarily ab-  
 " sent on their own private concerns, and it  
 " often happens, that others are either absent  
 " from the province, or, through sickness,  
 " are unable to attend, the council seldom  
 " consists of more than five persons; and  
 " commonly only three assemble to dispatch  
 " the most weighty concerns. This circum-  
 " stance lessens the real and constitutional  
 " dignity which this body are intended to  
 " maintain, and the people cannot be taught  
 " to reverence or respect an institution, the  
 " business whereof is transacted, like a court  
 " of quarter sessions, by three justices of  
 " peace! Hence it is, that the middle branch

“ is in a manner overwhelmed by the force of  
 “ numbers in the Lower House, and that  
 “ they fall into derision and contempt for the  
 “ want of numbers in their own. I there-  
 “ fore most ardently wish to see this evil re-  
 “ medied, by such an addition to the number  
 “ of his Majesty’s council, as that twelve  
 “ members at least may always be assembled  
 “ on the business of the state; then, and not  
 “ till then, will this middle branch be able  
 “ to maintain a proper balance to support  
 “ their own constitutional importance, and  
 “ to withstand the overbearing attempts, and  
 “ the haughty encroachments of the Lower  
 “ House.

“ I sincerely wish the lasting happiness of  
 “ the colony of South Carolina; and I am  
 “ firmly persuaded, that nothing is so likely  
 “ to promote it, as a timely and speedy inter-  
 “ position on the part of the crown, and a  
 “ decisive settlement of these uneasy conten-  
 “ tions upon the sound principles of the  
 “ English constitution.”

And the late Mr. Andrew Oliver, (who was  
 first Secretary, and afterwards Lieutenant-go-  
 vernour, of the province of the Massachusetts  
 bay,) in one of his letters to the late Mr.  
 Thomas Whately, (who had been secretary  
 to the Treasury under the late Mr. George  
 Grenville,) dated February 13, 1769, writes

as follows. " You observe upon two defects  
 " in our constitution, the popular election of  
 " the council, and the return of juries by  
 " the towns. The first of these arises from  
 " the charter itself; the latter from our pro-  
 " vincial laws.---As to the appointment of  
 " the council; I am of opinion that neither  
 " the popular elections in this province, nor  
 " their appointment in what are called the  
 " royal governments, by the king's *mandamus*,  
 " are free from exceptions, especially if the  
 " council, as a legislative body, is intended  
 " to answer the idea of the House of Lords  
 " in the British legislature. There they are  
 " supposed to be a free and independent body,  
 " and on their being such, the strength and  
 " firmness of the constitution does very much  
 " depend: whereas the election or appoint-  
 " ment of the councils in the manner before-  
 " mentioned renders them altogether de-  
 " pendent on their constituents. The king  
 " is the fountain of honour, and as such the  
 " peers of the realm derive their honours  
 " from him, but then they hold them by a  
 " surer tenure than the provincial counsellors,  
 " who are appointed by *mandamus*. On the  
 " other hand, our popular elections very  
 " often expose them to contempt; for no-  
 " thing is more common, than for the repre-  
 " sentatives, when they find the council a  
 " little untractable at the close of the year, to  
 " remind

“ remind them that May is at hand.”-----  
 “ It is not requisite, that I know of, that a  
 “ counsellor should be a freeholder. Accord-  
 “ ding to the charter, his residence is a suffi-  
 “ cient qualification: for that provides only  
 “ that he be an inhabitant of, or proprietor  
 “ of lands within, the district for which he  
 “ is chosen: whereas the peers of the realm  
 “ sit in the House of Lords, (as I take it,)  
 “ in virtue of their baronies. If there should  
 “ be a reform of any of the colony-charters,  
 “ with a view to keep up the resemblance of  
 “ the three estates in England, the legislative  
 “ council should consist of men of landed  
 “ estates. But, as our landed estates here  
 “ are small at present, the yearly value of  
 “ £.100 sterling *per annum* might, in some  
 “ of them at least, be a sufficient qualifica-  
 “ tion. As our estates are partible after the  
 “ decease of the proprietor, the honour could  
 “ not be continued in families, as in England.  
 “ It might however be continued in the  
 “ appointee *quamdiu se bene gesserit*, and proof  
 “ might be required of some mal-practice  
 “ before a suspension or removal. Bank-  
 “ ruptcy also might be another ground for  
 “ removal.”-----“ The king might have the  
 “ immediate appointment [of these counsel-  
 “ lors] by *mandamus*, as at present in the  
 “ royal governments.”-----“ Besides this le-  
 “ gislative council, a privy council might be  
 “ established.”



“ established.” These authorities are surely very respectable, and of prodigious weight in favour of such an amendment of the constitutions of the king’s councils in North-America. Alterations of those governments in favour of liberty, that are suggested and recommended by such friends to the authority of Great-Britain as the authors of the foregoing passages, seem to be indisputably reasonable, and expedient, and fit to be adopted by Great-Britain.

Eleventhly, To declare, by resolutions in both houses of parliament, that it is not expedient to require the American colonies to contribute any thing towards the discharge of the national debt already contracted, in any mode whatsoever, either by taxes to be imposed by the British parliament, or by grants in their own assemblies, or in any other manner whatsoever; but only that it is reasonable that they should contribute in a moderate proportion, suited to their several abilities, to such of the *future* expences of the British empire, as are of a general nature, and relate to all the dominions of the crown, and of which they will reap the benefit, as well as the inhabitants of Great-Britain.

Twelfthly, To offer an act of pardon, indemnity, and oblivion to all the Americans, who have offended the laws, upon their laying  
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ing down their arms, and returning to the obedience of the crown within a limited time: without making any exceptions whatsoever, not even of Mr. Adams and Mr. Hancock.

By such a plan the principal causes of uneasiness and discontent amongst the Americans would, as I conceive, be taken away, and, consequently, if they are sincere in their declarations of a desire to continue connected with Great-Britain, (as it seems highly probable that all the colonies, except those of New-England, are; and perhaps even in those colonies there may be many persons of the same disposition,) it seems reasonable to hope that it would be generally approved and accepted by them. And yet the supreme authority of the parliament of Great-Britain would not be given up.

F I N I S.



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