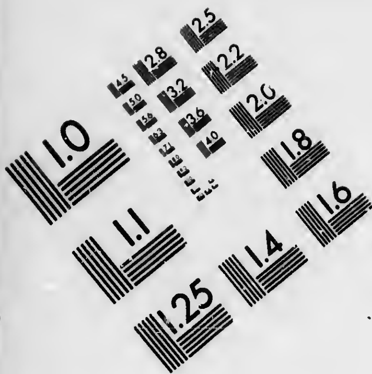

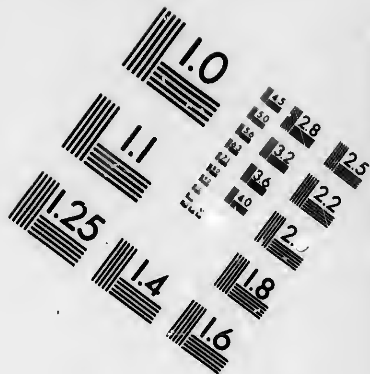

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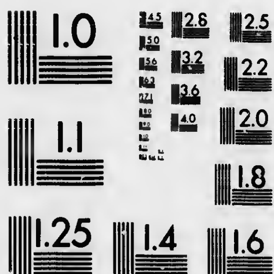

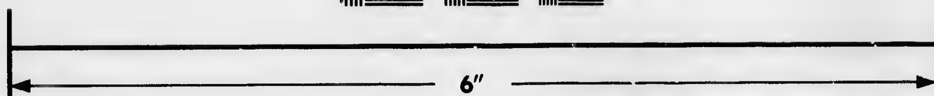

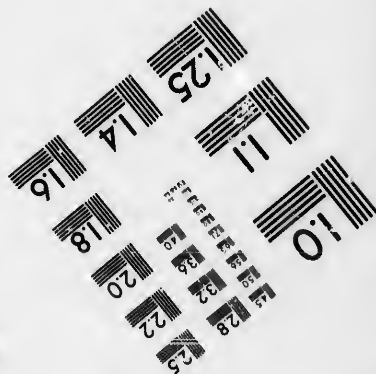

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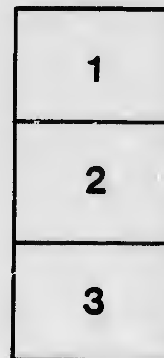

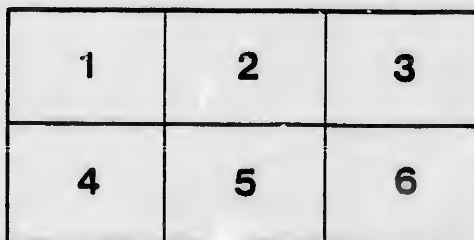

THE BAR, THE BENCH,

AND

THE ATTORNEY GENERAL FOR LOWER CANADA.

The Meeting of the Bar of Montreal, condemning the conduct of the Attorney General for Lower Canada, has been misrepresented by a portion of the press in this City.

The objects to be attained were neither of a personal or political character. The Attorney-General, no doubt, had acquired the habit of treating the opinions and sentiments of his confrères with supercilious indifference and contempt, but in justice to him it must be admitted he merely continued a practice established before his advent to office. His conduct, therefore, in this respect excited no personal animosity.

In all countries, even countries where despotic institutions exist, men whose lives are devoted to the study of the law, and to the examination and advocacy of important questions affecting the reciprocal obligations of individuals, and the duties of the governing and the governed towards each other, have commanded the confidence and respect of their countrymen, and have respected each other. If in some periods, that confidence and respect have been impaired, it has invariably been owing to the Members of the profession allowing themselves to lose sight of the maxims and principles, which the welfare of society, no less than their own honor, required them to maintain, and thus falling into a condition of sordid subserviency.

Whether the Attorney-General of the day believed that such was the present condition of the Bar of Lower Canada, it is immaterial to inquire. His conduct on many occasions indicated such a belief; it was high time, then, for the Bar to disabuse the mind of the Attorney-General of an error, so fatal to the profession of which he is a Member—so pernicious and dangerous in its consequences to the country.

Certainly the imperative necessity of this duty contributed to the late action of the Bar; but the more immediate cause of the Resolutions was the unconcealed design of the Attorney-General to substitute his will for the Law, and his daring attempt to browbeat the highest Judicial authority of the country into subservient submission to this disgraceful, dangerous and unconstitutional proceeding.

The Supreme or Appellate Court had declined proceeding with the important business before it, because one of its Members had been disqualified to act as a Judge, by his acceptance of another and exceptional office. The Chief Justice and Mr. Aylwin declared the Judge so appointed, incompetent to sit. The Judge so appointed to this exceptional office declared in favor of his own competency, and was supported by Mr. Duval. The result was, that the business of the Court was disastrously interrupted, and the incompetency of Mr. Caron practically declared and decided upon.

It is unnecessary to discuss the reasons given in support of Mr. Caron's competency to sit; but the tendency and ulterior effect of the procedure of the Attorney-General is curiously displayed by the weight attempted to be given to the letter of instructions sent to Mr. Caron, as a Commissioner, after his appointment and acceptance of that office. This letter was an order from the Minister of the day not to commence the work of codification until after the 1st of April, but to continue his duties as a Judge,—as if such an order could be properly addressed to a Judge and have the effect of over-riding the provisions of Acts of the Legislature. To have found a Judge willing to receive and obey such an order was not the least extraordinary part of the proceeding.

This procedure then, excited the astonishment, and aroused the indignation of the Bar, and these feelings were still more exasperated by the manner in which the Attorney-General received the intelligence of the firm stand taken by the Chief Justice and Mr. Aylwin against this illegal and unconstitutional course. The intention of the Attorney-General to bring the administration of Justice into contempt could scarcely be doubted, and a belief amounting to certainty existed, that it was further designed to induce and encourage the Court at Quebec, increased in number, to recede from the view taken by it at Montreal.

The Attorney-General must have had in his possession the decision of the Court in Montreal before he used the objectionable language attributed to him, and when he ventured to say that he shrugged his shoulders in pity for the men who could arrive at this conclusion. It is manifest he struck a blow at the independence of the Bench, which the Bar were bound to resent. To allow such an outrage to pass without rebuke, might have been considered an approval of a course placing the Judiciary completely in the hands of the Executive, and the inevitable result would have been the degradation of the order, and that the country would have been cursed with servile Judges entirely subordinate to the caprices of the Executive Government.

The resolution charging the Attorney-General with intending to bring the Administration of Justice into contempt was not meant to imply, as hireling scribes have said, that the Attorney-General left his own house with that object, but that the condition of his mind was

that of contempt for the Bench, and that the proof thereof was established by the language used on that occasion. It was an assertion of superiority, inconsistent with and dangerous to free institutions. Fleming did not leave his boarding-house with the intention of slaying his victim, but the possession of dangerous weapons was considered evidence of intention. So also, Mr. Cartier, by his bearing towards the Bar and the Bench, excluded any other interpretation than that of malicious intent. As he dealt out justice to that boy, so he received it at the hands of his order.

Mr. Cartier, it may be admitted, may have been misled by the attidude of some Members of the Bar and Bench towards him, an attidude inconsistent with the independence and spirit which ought to animate the members of a liberal and honorable profession. The Legislature, in an unguarded moment, had placed in the hands of the Attorney-General the power of selecting members of the Bench for Commissioners, with increased emoluments, and of promoting them from an inferior to a superior grade. It had enabled him also to name Advocates to new and lucrative appointments. The result was, that the expectants, with few and honorable exceptions, instead of qualifying themselves for such distinctions, occupied their time not in the performance of professional duties, but in following the movements and executing with servile alacrity the wishes and directions of the dispenser of so much and valuable patronage. In some respects Mr. Cartier is to be admired. His word is his bond. If he says he will do a thing, you may consider it accomplished. The parasites which surround him he treats with disdain. He orders and he pays. They obey and receive their wages, but he does not condescend to terms of friendship with them.

The Bar, in their support of the Chief Justice and Mr. Aylwin, were not influenced by private motives. They did not examine the names of the individuals; they merely considered the principle at stake. They protest against the view taken by one of the newspaper correspondents, who coolly admits that if he had thought the language applied to a particular Member of the Bench he would have concurred in the action of the Bar. Such views are not shared in by the Bar. They are not the slaves of the Bench, and they are not disposed for any consideration to *agenouiller* themselves to any Member of the Bench.

The Resolutions complaining of the delay in making Judicial appointments, and pointing out the danger to the independence of the Bench of converting Judges into Commissioners, were rendered necessary in consequence of the evil results attending the power thus conferred on the Attorney-General, and the delay permitted to elapse for its exercise. Painful suspicions were prevalent, and universal fear and doubt occupied the minds of those who ought to have been filled with confidence and trust. The case of the Ministerial shuffle having been decided in Upper Canada in an unsatisfactory manner, the propriety of trying the question in Lower Canada was entertained; but anxieties were felt as to the Bench before whom the question must have been tried. The Shuffler-in-Chief, the Minister responsible for the flagrant evasion of the Law, could appoint to other and more valuable offices, and it was determined that a question involving his political existence could not safely be tried by persons who had been reduced into subjection by the improvidence of the Legislature. To avoid the criticisms which the failure of the prosecution would have evoked, the trial of the question was abandoned—the preservation of the ermine from the suspicion of political bias and subserviency was paramount—the Bar then could only denounce the practices as unwise and unconstitutional, destructive alike to the respectability of the Judges and the interests and liberties of the country.

The Resolution declaring that the office of Attorney-General had been degraded into a mere political employment, was intended to mark the condemnation of the Bar of the system of appointing persons as Crown Officers not qualified by their legal attainments to discharge the duties of the office. The Attorney-General should be found in Court, and if he were, he would be made to respect his order by the Members of the Bar he would encounter; but the running about corridors and lobbies, and whipping in absentees by telegraphs are now the important duties devolving upon Her Majesty's Attorney-General for Lower Canada.

The course adopted by the Bar, will not be considered by the Bench as adulatory; but, on the contrary, will be recognised as a manly and independent movement, calculated to check the encroachments of the Executive, and to impose upon the Bench, the necessity of so comporting themselves as to obtain the approval of the order to which they belong. It will prevent any *tripotage* between the Attorney-General and any Member of the Bench, and save us and the country from political influences in the disposal of the Judicial patronage of the Crown.

There were other Resolutions proposed at the preliminary meeting, which did not meet with unanimous approval, and in consequence were withdrawn. The object of them was to condemn the majority of the House of Assembly who supported Mr. Cartier on the occasion in question, and by that means it was intended to warn the Members of the profession, in Parliament that they had responsibilities towards their order which no selfish personal advantage should induce them to forget.

It was also contemplated to convey to the Governor-General, that he had certain duties to perform, and that if he continued to play the insignificant part he has been doing in the Government of this country he might find that he had been made an accomplice in a state of things in Canada similar to that in the Ionian Islands.

> In tibi liber Homo et Regis conviva videris ;
> Captum te nidore suæ putat ille culinæ ;
> Nec Malé conjectat.

Our attention was directed to the Editorial in the *Weekly Pilot* of Saturday last, by a friend who boasts that he allows no paper, however little entitled to consideration, to escape him without reading its contents. It is due to this amiable eccentricity, that we were induced to peruse the article, and we here give our views of its value. The language there used would be unfit for the columns of any paper, not exclusively intended for circulation among the class formerly occupying the Five Points—and could only have been employed by one lost to self-respect and glorying in the performance of servile duties to the Attorney-General.

The commentator begins by stating, that the article commented upon was intended for private circulation, but that he intends to defeat that object by its publication in his columns. If limited circulation had been intended, without selection as to readers, the publication in the *Pilot* secured the object of the writer; but the possession of the obnoxious document by the Press of this City, proves that the writer preferred prefacing his commentary by a statement, at once preposterous and untrue, in order that the exordium might be consistent with the rest of his performance.

It would be difficult to meet with a production so malicious in intention, and so weak in execution, as the one under review. It is filled with abuse of the Bar, and flattery to the Attorney-General. It abounds in coarseness without sarcasm, and revels in personalities without argument. The writer, in his blind haste to defend his master, does not see that he has merely damaged him. We have no doubt that he will fail in obtaining his approval; while by all others, he will be despised as an unscrupulous and over-zealous advocate of the interests of those whose wages he receives.

The Meeting of the Bar did not consist of fourth, fifth and sixth rate Advocates. No one knew better than the writer that, in making such an assertion, he would be contradicted by every person having regard for veracity. Whether such misrepresentation was desirable at a distance, where alone it could be credited, we cannot say; but if such were the instructions received, the party performed his task with no niggard hand—like *Fag* in "The Rivals," when he drew the Bill without authority, he hesitated not to affix the endorsements.

The Bar of Montreal, no doubt, has great reason to regret the want of unanimity heretofore prevailing among them in matters affecting their general interests. The absence of which has encouraged unscrupulous writers to address and speak of them in terms of undisguised contempt. In no country where the Bar is depreciated and held in contempt can true liberty exist. When citizens are oppressed and attempted to be enslaved by despotic authority, to whom are confided their interests and safety? To lawyers. In every emergency, they have always been in advance, resisting and defying the arbitrary exactions of power. Montalembert and the Press itself, looked not in vain for support and defence, when attacked by the most powerful and despotic of modern governments. Berryer and Dufaure nobly fulfilled their calling; they were not prevented by selfish or personal considerations, from assuming the conduct of the defence. Their brilliant and powerful efforts on that occasion have sanctified their celebrity; unbounded respect hallows their name in the hearts of the lovers of freedom in all parts of the civilised world. In France itself, the paid writers of that dynasty were silent. It remained for us in Canada to produce writers without decency or shame, who attempt to depreciate an order, which, if really powerless and degraded, liberty itself would be but a mockery.

The slavish horror affected at the irreverent mention of the Governor-General would provoke a smile, if it were not another evidence of the determined and painful servility of the writer. The Governor-General, as the Representative of Imperial authority, ought to recollect that his acts, in a private capacity, interest no one beyond his private friends, but that in his public capacity, his acts are of universal interest, and that the public have a right to scan them, and to declare that his complete subserviency to the Ministry is beyond even that which responsible Government requires, and, that his sanction of and participation in the scheme by which men were preserved in their places without going through the ordeal of re-election, lowered the standard of regard for English Institutions, and contributed to a diminution of respect for Imperial authority—aptly illustrated, by one of his favorite Ministers, no longer in office, when he spoke in the Halls of the Legislature, of the expediency and necessity of Independence of this Colony.

Time, inclination and ability are wanting to follow this writer in his hysterical bursts of anger at the treatment of his idol, no doubt become so, in consequence of his insolent assumption and contemptuous treatment of the Law and the Bench. The Attorney-General, despite the praise lavished upon him by unprincipled men, must be satisfied that the conduct complained of cannot be repeated with safety to himself, and that no Statesman not relying upon corruption for support can afford to continue, with impunity, a course of hostility and studied disparagement of the legal profession.

We are inclined to ask the nature of the glittering reward, anticipated by this writer for his base services. It will be no *po-sition* of trust and honor, we hope, for assuredly he will betray the one and be false to the other.

The *Montreal Gazette* also contains articles on this subject, if relieved of their abuse, more in the style of a political bravo, than that of the conductor of a respectable journal, it might, perhaps, be considered an ingenious and plausible attempt on the part of Mr. Cartier's servants to shelter him from the consequences of his reckless imprudence and impetuosity. Persons like the writer of these articles always believe that a man must be animated by selfish or servile motives. Under the influence of such impressions, the writer persists in considering the paper reviewed by him as a tribute of personal flattery to two Members of the Queen's Bench. The error, even if it be unintentional, is a grave one; and if the assertion were credited, it would contribute to prevent writers from expressing their opinions, lest their motives should be distorted, and their objects reduced to the level of some of the writers in the Ministerial Press of the day.

The independence of Ministerial control evinced by those two Judges commanded the sympathy and obtained the support of honorable men who had no private objects to subserve. In the opinion of the Bar, this independence is essential for the pure administration of Justice; not a luxury to be exhibited merely when the interests of the Government are not adverse to its display.

Again, this writer affects to believe that there was an intention to assail the Members of the Superior Court, but no candid reader will deduce any such inference from anything that was said. The subject of remark and, we admit, of censure, was not individuals, but the system. Many, if not all, the Judges of the Superior Court may compare favorably with occupants of similar positions in any part of this continent. The object of the remarks which have excited so much venom, was to preserve the high position of the Court inviolate, and to secure that object, it is necessary that the Court should be protected from the possibility of suspicion of undue leanings towards the Government. Judges cannot, with safety to themselves nor without damage to the public interests, be placed in positions calculated to inspire doubt and distrust.

The wholesale exercise of the power conferred on the Minister of the day of appointing Members of the Bench to offices superior, either in honor or emolument, awakened attention, and were such a course to continue, would inevitably impair public confidence in the Judges. To check a result so injurious to public justice, and so mischievous to the public welfare, the Bar denounced the system. The Members of the Bench ought to be preserved from association with Ministerial intrigue, and the hope of preferment depending upon the whim and caprice of the Attorney-General, lest, instead of being considered the faithful guardians of the rights of their fellow-citizens, they should in public estimation, be degraded into pliant instruments in the hands of designing or daring Ministers.

The exercise, by one man, of the dangerous patronage conceded by the Legislature to the Crown was alarming, even while men without stain or reproach occupied the Bench. Their fears would have been boundless, if they had shared the opinions of this writer as to the general servility and want of principle of the profession. If the sources are poisoned, the stream will be corrupt. We cannot expect the Bench to consist of men of integrity and honor, if the men from whom they are selected are degraded and worthless.

Again we must rectify an assertion made by this writer, that we maliciously insinuated the incompetency of the Counsel engaged in the conduct of the criminal business. We must have written very hastily, if such an interpretation could with truth be ascribed to us. We think, rather, that our observations referred to individuals who avoided the Courts; therefore could not have applied to Mr. Monk, who, in his position, is obliged to meet *all comers*; and if any one were disposed to dispute his competency and fitness, which we do not, but, on the contrary, cheerfully admit, we think the proper place would be in the Court itself, and not in newspaper paragraphs. The writer of these articles, anxious to obtain additional remuneration, we presume, out of the public purse, upon which we doubt not he is already fattening, exhibits that reckless and undisciplined zeal, which persons similarly situated always do, and considers the defence and support of the Judges in that emergency as deficient in value, because no disposition to support them *a tort et a travers* has been exhibited by the persons connected with the movement. If such movements had been as common heretofore as they

will be hereafter, writers of the kind employed in the staff of the *Montreal Gazette* would be compelled to earn their bread in a different manner, and the Attorney-General deprived of the sickening adulation showered upon him by such men, would learn to act so as to obtain approval and support from persons worthy of giving it, and whose approbation would not convey with it personal degradation to the recipient.

This writer talks of some mysterious appointment of one of Mr. Cartier's friends, as the cause of the malicious attack upon the Attorney-General. We are not aware of his meaning. It is more than probable that many friends of Mr. Cartier have received subordinate appointments to which their professional merits did not entitle them. With these appointments the Bar can scarcely take any interest. Our excellent friend, Mr. Loiselle, retiring from his office of keeper of the Court-House, might be replaced by one of the Ministerial writers, and we have no doubt that the Bar would remain silent. The occupant, though he may receive the salary, must be content to remain unnoticed. So with all subordinate Officers. Not so with the Members of the Bench or the Crown Officers. These appointments are too important to the public interests to be given for votes on a Seat of Government question, and if granted as rewards for political services they must in the end, destroy the Minister who ventures to adopt this course to maintain his precarious and slippery eminence.

The Bench of Canada enjoy the respect and esteem of the public, and their integrity and impartiality have never been doubted, so much so, that the improvident Acts of the Legislature complained of, at the time they were passed, escaped notice and animadversion; but a collision between the Executive authority and the Judicial power exhibited the pernicious and dangerous tendencies of this system to the public interests, and doubtless contributed to disturb that feeling of confidence which had up to that moment existed in the minds of the people generally. This fear did not infer that the private character of the Judges are subjected to depreciation, but would be felt as applicable to every man in that position. We recollect that Mr. Justice Gale, who long and ably filled the Judicial Seat in Montreal, declined taking part in the decision of a case in which one of his intimate friends was interested. No one could have supposed, that a man like Judge Gale, whose Judicial life had been spotless, would not have administered Justice, with scrupulous care, and without reference to his feelings of friendship; but he considered, and wisely, that no Judge ought to be placed in that condition, where even the suspicion of partiality might have been entertained.

The writer good-naturedly suggests an indictment for libel. If that humane intention were carried out, we would be disposed to recuse any Judge who had expectations of preferment, or who had just been promoted, from presiding at our trial, on the ground that hope of reward from, or gratitude for, benefits conferred, by one of the litigants, is not precisely the condition of mind most favorable to the impartial performance of Judicial duties. In such a recusation, we would obtain the sympathy and support of the people, and this evil system would be crushed, even at the expense of a Revolution. Mr. Justice Meredith has earned by his integrity and ability a very high position in the opinion of the profession, both in Montreal and Quebec, and none would regret more than ourselves, that a system, the evil consequences of which could not be anticipated by him or by us, should produce so sad a result as the impairing of his deservedly high position. Fortunately, by the forbearance of Mr. Caron, no opinion as to his competency, was required at the hands of Mr. Meredith, but if such an opinion had been required, we would have expressed our regret that a Judge should have been placed in a position where the Judgment, if in affirmance of Mr. Caron's competency, might not have secured that respect, which his Judgments heretofore have universally received. Again, the danger of this system would have been injuriously exemplified. But all these apprehensions have now subsided (excepting our trial). And we will gladly welcome him as an ornament to the Bench to which he has been promoted.

We may add that we have no ungratified ambition. We had no expectation of any kind of Ministorial favor. We have avoided any friendly relations with Attornies-General for many years past. We have performed no services for them. We did not enlist in their Bands of mercenaries; and, consequently, it would have been idle on our part to have indulged in hopes of preferment.

The appointment of the Clerk of the Court, at Aylmer, to the Judgeship, is another evidence of Mr. Cartier's culpable disregard of public opinion in the disposal of the Judicial patronage. But enough. We do not like writing; and we have entreated our eccentric friend to abstain from bringing under our notice any other articles, as we do not desire to be provoked out of our habits of silence. We would not have written again if we had not feared by our silence to have given the stamp of truth to the distorted statements of the writer, who gladly would have changed the issues; from the system to individuals. We have thus discussed this matter, without any heat or annoyance—very much as we would conduct a case—and cannot understand that our adversaries should indulge in impertinences, though we can afford to smile at and forget them.

MONTREAL, April, 1859.