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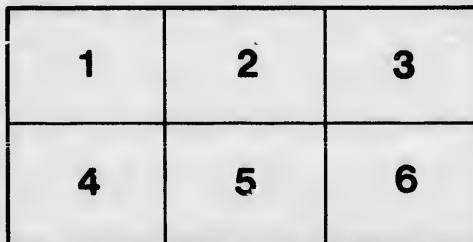
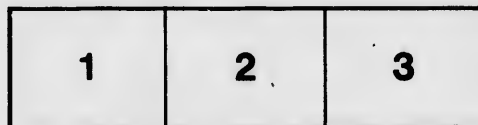
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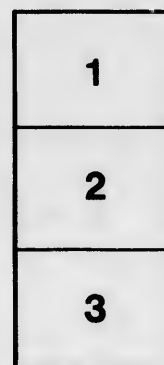
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*To the 'Commons' House of Assembly of  
Lower Canada, in Parliament Assembled.* 1818

Gentlemen,

I have taken the liberty of addressing you on the subject of the administration of Justice, and the Courts of Law in this Province.

To you Gentlemen, who place your Happiness in Liberty, and Liberty in the just and impartial administration of the Law, no apology will be necessary for the time, that the perusal of this Letter will occupy, or for the unimportance of its author.

As a Subject, I share equally with you in every benefit which your wisdom bestows, and whilst to the Common Stock of Happiness I am desirous of subscribing my Mite, you will fully sympathize with me in the difficulty of the undertaking, and in the just appreciation of my endeavours not leave me to regret the misconstruction of my motives.

If in the lenity of your own feelings you should think mine have been too much excited, and that my Pen has taken too bold an aim in apparently dictating, I entreat you to impute such errors only to the zeal for the cause I am advocating.

His Excellency's speech first directed my attention to this point, and as "a Stranger among us without partialities, with no object but the Public good," His Lordship I am sure will not consider himself degraded by so humble a labourer in the same Vineyard.

Though the Administration of Justice in every Country involves considerations of the highest importance, both to the Sovereign and the Community, yet in no Country but that of Canada did it ever form so great a portion of its Civil Expenditure.

It will be surprising to any one in the least acquainted with the ordinary routine of Government in other Countries, and scarcely to be credited in this, that the Expenses attending the administration of Justice alone absorb more than one Fourth part of its whole Revenue.

This fact admits but of three inferences 1st. a singular depravity and corruption in the people, 2nd. a defect in the Laws or 3rd. the most prodigal and superfluous application of money in the administration of it.

The first perfectly remote and unconnected, for the Records of our Courts refute any such position. The 2nd. and 3rd. arising out of and depending upon each other perhaps not untrue.

It can not be imagined, that in the development of this subject, ceremonious or partial investigation will either abridge the amount, or prescribe the remedy. A strict adherence to truth, through which alone this enquiry can be conducted or the abuses be displayed, though it may devote the writer to the Resentment of the angry or the power-

ful, Candour will acquit him of Political Rancor, or Personal animosity. The unsparing hand of the Surgeon incurs no charge of want of feeling, though he cut deeper than the wound in the hope of effecting a cure. By a similar process I shall endeavour to point out how the abuses originate and how most salutarily to apply the remedy, and whilst in the discharge of a duty I fear no man's resentment, lasting regret would accompany the desert of it.

By a defect in the Law I do not mean that the subject loses his rights, or that the Prerogatives of the Crown are either oppressive or overstrained, nor in the extravagant expences attending the administration of Justice, do I mean to infer that the Judges themselves are overpaid. Neither is the fact.

The defect in the Law is perhaps principally to be attributed to the want of Inferior Courts of Justice, to the limited number of those already established, and to the unprecedented distance over which they extend. However we may venerate the name of Justice, some parts of this Province enjoy it only in idea, nor can they derive any of the solid advantages of it, without the most expensive journey of from 120 to 250 miles in the pursuit of it. With such difficulties to encounter, the negotiations of Trade are embarrass'd or limited to the necessity of minor dealings, the creditor loses his confidence or his claim, and the Law suffers violation with impunity.

However impartially justice may have been administer'd upon the present system, it will not be denied that the system itself admits of Improvement, and though experience may dread any innovation upon established custom, yet retrenchment may meet a more favourable reception.

I think I am in unison with the sentiments of your Honorable House when I assert, that the number of Judges at present employ'd is not only more than the administration of Justice requires, but likewise more than the Revenue will support.

The first Act of George the Third that rendered the Judges independent, though an unfading wreath to His Memory, is with the number of our Judges attended with more than ordinary expence.

The cumbrous appendage of Eleven Judges which the present system has entailed upon us, and with which the Province is overwhelmed, renders their Independence and their number if derived from the Revenue of the Country not only uncontrollable but impossible.

If there were as many Courts and Circuits in this Country as the Province requires, and as there are in England France and other Countries, and the Judges in proportion to what they now are, the Revenue of the Province six times over (according to the present system,) could not pay the administration of Justice.

With the Improvement of this Colony the Trial by Jury may probably be more generally extended, and where Lands are held in free and common soccage, wholly adopted.

I am fully aware that in many suits trial by Jury may be objectionable, and perhaps in all where they have the appearance of a case in equity, but in all actions of assumpsit or the ordinary causes of a Court whether between Merchants or not, trial by Jury might not improperly be at the option of either party. Without arrainging or in-

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tending to arraign in the smallest degree the Honor and Justice of  
the Judges, Civil Liberty cannot be too jealous or watchful of their  
power. The Rights of Persons have ever been found *as safe in the*  
*hands of a Jury* as they have been in the *hands of a Judge* and in ma-  
ny cases *suffered much less*. An arbitrary Monarch is not so dange-  
rous as an arbitrary Judge, James the 2<sup>d</sup>. was neither so obnoxious  
or dangerous as his Judge Jeffreys, and while pity draws the veil over  
the errors of the King, detestation execrates the memory of his san-  
guinary adviser.

It is scarcely to be credited that a Province containing only two  
Cities and one Market-Town, maintains Eleven Judges, whilst all  
England, exclusive of the Lord Chancellor, contains no more; and  
that the salary of the Eleven Judges is more than one eighth  
part of its whole Revenue. Were this fact to stand alone, and all  
other records of this country to be destroyed, the Historian would  
ascertain as satisfactorily as from Chronicles, that the Colony must  
have been the offspring of some liberal Government, nor would he  
for a moment ascribe such profusion to its own resources.

If the Civil Code of France is to be the Civil Law of Lower  
Canada, and Eleven Judges must be maintained to administer it the  
Revenue of the Province cannot afford it, unless indeed the model  
be adopted in all its uniformity, keeping the relative situation of the  
Sovereign and the People the same, and whilst the people on one  
hand regale themselves with a Jury of Judges, that the Revenue on  
the other hand shall be as little embarrassed by the supernumerary pa-  
rade of them. The salary of a Judge in France arises out of the  
proceedings of the Courts of Justice, not from the Revenue of the  
Country; therefore, though their number may be expensive to the  
Sutor, it is not burthensome to the Crown: but the independence of  
the Judges and the impartial administration of justice, are too inti-  
mately blended to admit of separation, nor is it necessary for the  
reduction of this expense that any such experiment should be tried.

The alteration of the Courts of Law which I have the honor  
to submit to you, whilst it will *facilitate and render more general the*  
*ends of justice*, will of itself relieve us from this redundant and ex-  
pensive ornament.

To ascertain if any, and what saving can be effected in the  
charges for the administration of justice, it will be necessary to re-  
fer to the charges themselves, and to examine as narrowly as possi-  
ble the leading items which compose so very great a portion of the  
whole.

The Expense of the administration of Justice for the year 1818.  
amounted to £ 20, 700 Stg.

Out of this sum the Eleven Judges receive	£ 10, 925 Stg.
The Atty & Sol Gen for Crown Prosecutions	2, 560.
And the Sheriffs of Quebec and Montreal	3, 206.
making together the sum of	£ 16, 691 Stg.
nearly five sixths of the whole amount.	

It is self evident that if any abuses exist, or any reduction is to  
be effected, the field of operation is here, and it affords more than or-  
dinary opportunity. In the Investigation of the first sum it will be  
useless to enquire by what ordinances Eleven Judges were created  
or to trace them as any effort of patronage, reward of virtue, or zeal  
for Justice; sufficient for the subject is it to affirm that for the fullest,  
and most ample, administration of Justice in all the parts of this Pro.



vince, the Law can not possibly require more than Six. Three for the business of the Civil and Criminal Courts, and Three for the Courts of appeals. In England a writ of error lies from the Inferior courts of Record to the King's Bench, and from the King's Bench, to the House of Lords; but in this Country as we have no Court of Common Pleas, any action above £ 10 Stg. must be tried in the Court of King's Bench; and if their shou'd be any appeal from thence, it can only be carried to a superior Court, which is the Court of appeals, or if this Court cou'd be dispens'd with, to the Legislative Council, as the House of Lords here.

This would I fear be throwing too much duty upon the Legislative Council, but if for example the Inferior Court of Common Pleas were establish'd at Quebec, Montreal, Three Rivers, and other places upon the Circuit, three Judges wou'd be sufficient; a King's Bench Court would perhaps *only be necessary* at Quebec and Montreal with the Chief Justice as Judge; this wou'd render unnecessary Seven Judges out of the Eleven, because the appeals from the Common Pleas, wou'd be carried to the Superior Court of King's Bench, the weight therefore, of the greater portion of the appeals would be upon the King's Bench, and the appeals from the Court of King's Bench might without overburthening the Legislative Council be decided by them.

This arrangement would probably be as conducive to the general ends of justice as a separate Court of Appeals, and would save all the expense of one. In either alternative a great reduction might safely take place; in one case five Judges, and in the other seven, would be no longer necessary. In the administration of French Law as no *Jury* is impanelled the causes are decided by a majority of the Judges on the Bench, and as it has happened in Quebec, in consequence of there being *four* Judges on the Bench, causes have not been decided and perhaps *never will*. If a majority be indispensable, an odd number will, of course, only ensure it; and in justice, as well as in mathematics, *three* will be found in every event to yield the greatest proportion that numbers can devise, namely, two to one. This plan, however, cannot succeed unless the duties of a Judge, be less resident and sedentary than they are at present. It would be sufficient, probably, that the Chief Justice of the King's Bench and a Puisne Judge resided in Quebec; and that the Chief Justice of the Court of Common Pleas and a Puisne Judge resided in Montreal. For the Court of Common Pleas, therefore, in Quebec, it would require the two Judges in Montreal as associates *here* with the Puisne Judge; and for the Common Pleas in Montreal, it would only require the *Puisne Judge from Quebec*. For the other parts of the Province, and where Courts are not at present held, for which Petitions have been pouring in for the last several years, and strongly recommended by His Grace the Duke of Richmond, it would be sufficient, probably, to form *three circuits*, the Eastern, Western, and the Home; one Judge would be sufficient for each of these circuits; it would only be necessary to insert the names of two principal Magistrates in the Judges' Commission, who will then sit as associate Judges, as is the *practice* at this moment in Upper Canada. The Civil and Criminal Courts might be held in the Counties at the same time, and either two or three times a year, as necessity might point out. Perhaps there is nothing which so much contri-

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butes to the settlement of a new Country as the erection of Court-Houses and the regular administration of Law. In some parts of Upper-Canada, and indeed in all the new settlements of the United-States, the Court House and the Church is the same building, and while Justice is considered as the safe-guard of property, the certainty of being able to obtain it holds out one of the principal inducements for settlement, next to the quality of the soil, and even this is not always paramount.

According to the *present system* of paying so large a sum for the circuit money of the Judges, this object, however desirable or beneficial to the Province in general, could not be obtained. But if necessity point out the propriety of its adoption, prudence and economy can without any injury to the Judges curtail a great part of this expense. If the charge of £75 Stg. or £83 Cy. can for a moment be imagined not to exceed the actual disbursements of a Judge going to Three-Rivers or Montreal, then indeed no saving can be effected. But in a Country where travelling affords scarcely convenience, and where the Roads and Inns prevent the splendour of equipage, it appears not a little unreasonable that the Revenue shall incur a charge of £83 for a service on which one would imagine it would be rather difficult to expend 20.

The grave Assembly whom I have the honor of addressing, will, perhaps, readily allow that the dignity of justice is supported more by conduct than parade.

A Judge ought to be reimbursed for the actual expenses of travelling but no more: upon this plan the increase of Court Houses and Courts in circuit, would not cost the Province more than the present circuit money amounts to, and probably not half so much. Without incurring the charge of prolixity I have, perhaps, dilated as much on this part of the subject as the circumstance requires, at present.

The next item that comes under observation is the sum of £2560 Stg. paid to the Attorney and Solicitor General for the Crown prosecutions.

Two causes can alone account for the great amount of this charge; the *double fees* of the two Crown Officers, and the *trivial grounds* upon which the prosecutions of the Crown are too frequently and perhaps unavoidably founded.

Though the defence of the Public morals requires the Prosecution of all Public offences that are likely to endanger them, it does not appear equally necessary that individual misery should be a too profitable source of revenue to the Crown Officers, or that it is indispensable to the prosecution of guilt that they should both divide the spoils of one poor victim.

Their joint efforts are not only perfectly unnecessary but they are extravagantly expensive to the Crown, nor is it likely that this sum will ever be lessened while it affords such a very profitable employment; by a reference to the first charge in the contingent accounts of these Officers, this enormity will be better exemplified than by the most elaborate dissertation upon it.

The Attorney General for prosecuting 17 Prisoners and drawing 38 Drfts. and copies of Indictments at the Criminal Court of Montreal in March, 1818, with an allowance for travelling expences of 45 Pounds stg. charges the Crown £ 240, 5.

The Solicitor General for the same Pri- } 189. 18.  
soners and at the same Court Stg. } 430, 3. £478, 0 H. C.

The insignificant grounds, or charges in the Indictments are proved by the same reference, where 38 were either useless or thrown out by the Grand Jury at an expense to the Crown of £115, 18 Stg or £128, 15, 6 Hx. cy. this charge however has a *double operation* the Crown not only suffers in the charge of £128, 15 6, but it increases very greatly the contingent accounts of the Sheriffs in the sums paid to witnesses &c, &c.

There are two causes that greatly contribute to this excess, the Courteousness of the Police Magistrates in turning over every petty offender whose crime will admit the Possibility of constructive guilt, or bear an *indictable* appearance, to the Crown Officers for prosecution

That my censure may not appear more harsh, than truth can justify, amongst many other Indictments equally futile, was one brought before me as one of the Grand Jury for the last Criminal Court of Oyer and Terminer for Quebec, in which a Prisoner who had been in Jail for Two Months was indicted with all the "pomp and circumstance" of arraignment for Stealing *two Penny Rolls*, many other instances equally unimportant and to a *great number* were thrown out by the Grand Jury until the Crown Indictments became a standing Jest, and every one thrown out received some smiling congratulation amongst us as the real economists of the Crown.

This course however obnoxious to the Crown Officers themselves is forced upon them, nor would they do their duty to the public if they were less vigilant or less willing to act. Increasing the power of the sitting Magistrates, the Establishment of Inferior and District Courts while in some degree curbing the growth of crime, would render this unpleasant duty, not only less necessary but less expensive.

Were the Law Officers upon the present system to do less every petty offender would escape until fraud deriving assurance from impunity and hardening in guilt would be terminated at last by fatal punishment.

To prevent the recurrence of similar excesses, it might not be unadvisable perhaps to extend the powers of the Police Magistrates, if at present insufficient, that they may be enabled to deal more *summary* and less costly justice, this would likewise have the *double operation* of lessening the contingencies of the Crown Officers and the Sheriffs. The local jurisdiction of the Attorney and Solicitor General might be separated too, with equal effect for every purpose of justice and at the same time reduce half the expence of it; One Officer by residing at Montreal (which indeed always was the arrangement before the appointment of the present Solicitor General,) could conduct separately all the Crown Prosecutors of his own District, at the expense only of his own fees, as well as if both were employed, the travelling expenses of both Officers to Montreal at the charge of £100 cy. would thereby be entirely sav'd which in the year amounts to £400. as travelling expenses to Montreal, and Three-Rivers. In the number of Courts and circuits necessary for the Province it would not only appear *unreasonable* but *impossible* that both Crown Officers should accompany one circuit.

Though this would no doubt very materially reduce the emoluments of the Crown Officers, it would be a very essential saving to the Revenue, while *Justice itself could by no means be impeded*. The whole Practice of the Bar between Party and Party is open to them and the practice of the Crown though a powerful auxiliary never was intended to constitute their chief support.

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The duty is done, but the Revenue of the Crown Officer does not consist in the profits of the duty alone, it never perhaps constituted one tenth part of the actual profits of his practice, perhaps a considerable saving might be effected by giving the two Crown Officers, while resident or acting a fixed salary for all the business of the Crown in lieu of all fees and travelling expenses.

The next and last of this expensive establishment is the Contingent accounts of the Sheriffs of Quebec and Montreal, these charges are so immediately the result of the other two, that without an alteration in them nothing can be obtained here.

These charges though apparently great afford no profit to the Sheriffs themselves, they are the consequence only of want of better management in the higher departments in the Administration of Justice. These items consist in the expense of supporting Prisoners, subpoenaing, and the payment of witnesses, The expenses attending the support of the Prisoners are very much increased by the distance between one Jail delivery and another, which take place only twice a year, and the expense of the Witnesses are increased by the great distance of the Courts themselves, nor will this be matter of surprise when it is recollected that the Criminal Jurisdiction of Quebec extends Easterly above 200 miles and every other Criminal Court above 100.

The expense of a witness this distance is not a matter of astonishment if it amount to £12 or £15 as it some times does, nor is it singular if a subpoena for such a distance add to it. While the Criminal Courts are only held twice a year at Quebec, Montreal and Three-Rivers, the contingent accounts of the Sheriffs will ever form a prominent charge in the expenses attending the administration of Justice; and it is difficult to find any satisfactory reason, why in the two Cities of Quebec and Montreal, containing Nine Resident Judges that those Courts should not have occurred oftener, For the City of London and the County of Middlesex the Criminal Courts are held every Six Weeks, the Culprits here are certainly not as many, nor indeed are the funds that support them. Though it might not be necessary to follow the precedent altogether the example itself is not unworthy imitation,

As far as regards the revenue the saving would be immediate and effectual, nor would it indeed be unimportant. In every moral point of view it would be still more advantageous, Punishment is intended to awe by the terror of example, not to glut the vengeance of the Law. "The association of ideas is the cement which unites the fabric of the human intellect." The smaller the interval between the punishment and the crime the more lasting will be the two ideas of crime and punishment, Imprisonment before conviction is not intended as a punishment the shorter the period is therefore before trial, the less will the innocent suffer. The Marquis Beccaria says, "The confinement of a Prisoner ought not to be closer than is requisite to prevent his flight or his concealing the proofs of the crime, and the trial should be conducted with all possible expedition. Can there be a more cruel contrast than that between the indolence of a Judge and the painful anxiety of the accused; the comforts and pleasures of an insensible Magistrate and the filth and misery of the Prisoner. The degree of the punishment and the consequences of a crime ought to be so contrived as to have the greatest possible effect on others, with the least possible pain to the delinquent. If there be any society in which this is not a fundamental principle it is an unlawful society; for mankind by their union originally intended to subject themselves to the least evils possible."

I do not quote the last sentiment as having any accordance with my own. The principles of Government are too well understood to admit of such abstract or speculative philosophy. I merely copy it to preserve the context.

I have endeavored to make the preceding observations as succinct as perspicuity will allow, and in the illustrative parts of them, those sarcasms which are directed against the abuses of Office have gone beyond the intention of the author if they have assumed a personal character, but in the confidence of truth for the basis, I can safely say in the tenor of a Juryman's oath, that I have presented no one out of envy hatred or malice neither have I shielded others "out of affection hope fear or reward." I will now attempt by way of Recapitulation a short analysis of the plans I propose.

The proposition of Six Judges only, 3 for the ordinary Courts and 3 for the Court of Appeals which no Barrister will question as sufficient would be a saving to the Province of £4500, Stg. per. Annum.

The Proposal for the inferior Court of Common Pleas at Quebec Montreal Three-Rivers one Court on the Grand-River; Two Courts in the Eastern Townships Camouraska and elsewhere in the Circuit, with a King's Bench at Quebec Montreal and if necessary at Three Rivers would save the Province 7 Judges £6,000 Stg. this arrangement I am induced to think would be as satisfactory to the Country and the Bar as any that proposes retrenchment and the full administration of Justice together. The Legislative Council in this case would be the Highest Court of Appeals, in the nature of the House of Lords in England. The frequency of the Criminal Courts every 2 or 3 Months, would save in the Contingent accounts of the two Sheriffs of Quebec & Montreal at least £2000, per. Annum.

The Local jurisdiction of the two Crown Officers each prosecuting separately at their separate fees would save at least £1200. per. Annum.

Still further to facilitate and to promote the ends of Justice in those parts of the province too distant from the Courts to obtain, I would follow the example of our own Alfred and divide the Province into Counties, not nominal as at present but in such a method as to ensure the administration of Justice in each. For this purpose I would follow the example of the Sister Province as a model and every county or District should have as it has there a District Judge. This Judge is generally one of the most intelligent magistrates of the District at a salary of £10 per. Annum. with a fee of 12 6 upon every trial paid by the litigants his jurisdiction extends 30 or 40 miles and for any sums above £5 and not exceeding £40 cy. The Sheriff attends & Juries are impanelled. The suits are generally for simple contract debts and notes of hand and though the verdict be not given with any legal dissertation upon the the mazy windings of the Law, it gives quite as much satisfaction at a much less cost and I never heard of any appeal. This Court is held every 3 months and the Court of Quarter Sessions meets at the same time to try all petty offences, so that at the Assizes which only occur once a year very little except Civil Cases of more importance than £40, is left for the Court. For cases under £5, they have 2 Courts every month in which 3 Magistrates preside and dispense Justice for about 5s. each Suit. This Court is in every Township. It is only necessary further to add that the Upper Province administers Justice in this manner with one Chief and two Pusine Judges as well as the Lower Province with Eleven.

One Plan proposes to save  
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To Sheriffs of Montreal and Quebec

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Though both these Projects may admit or require some modifica-  
tion the general outline is correct I have not added the saving  
that the proper regulation of the Judges' Circuit money would so eas-  
ily afford; which at the most moderate calculation would be £500, or  
£550 Hx. cy. In the adoption of either of the plans proposed, it  
would of course be necessary to make some provision for those Judges  
who by this arrangement would be unnecessary in the administration  
of Justice. A pension of £ 500, per. Annum. upon which a super-  
annuated Judge retires, would in this case be sufficient nor would it  
be harder upon them than upon military Officers of high rank  
who are forced to retire upon much less after harder service;

The Vacancy which the Death or Retirement of an Elder Judge  
might create, might be filled up with the Senior Judge of the Reti-  
red List. In the mean time probably; the recommendation of your  
Honorable House to His Excellency the Governor in Chief for the  
appointment of the Ex Judges to the Legislative Council while it  
would give great weight to that assembly as the high Court of ap-  
peals, would *ad consequence, dignity, and utility* to their retirement.

The Retired Pensions of the Judges might be defrayed by a tem-  
porary tax on the proceedings of the Law, or upon *Rum* which  
while it would restrain the too free use of either, would essentially  
benefit the Province.

Should any of the preceding observations assist you in the Revision  
of the Courts of Justice or be at all worthy your adoption, I Shall  
consider myself amply compensated, in the approval of your Honora-  
ble House, for all the resentment that I have drawn upon myself.

That I may not be accused of wanting respect for your Honorable  
House in submitting an anonymous production to your notice, I beg  
to inform you that I have put your Honorable Speaker in the possession  
of my name, leaving it to his discretion or your desire whether or not it  
shall be necessary to promulgate it.

If the Facts or argu-  
ments have any weight in themselves, a name could not add to their  
solidity and aware that the discussion may be obnoxious to many,  
it will not be surprising that I should not be solicitous for the publica-  
tion of mine. Anxious for the prosperity of this Colony I have no-  
thing to fear but in the misconstruction of my motives, for if a desire  
to lessen the Burthens of the Country be a sin, I feel fully assured  
Your Honorable House is the most guilty of the two.

Confiding therefore in the liberality of your Honorable House I  
have no reluctance in depositing the secret, sensible that necessity a-  
lone and not curiosity in the publication of my name, will expose  
me to any hazard from the shafts of ridicule, obloquy or revenge.

I have the Honor to be

With much respect

Gentlemen,

your most Obedient

Humble Servant

THE AUTHOR.

