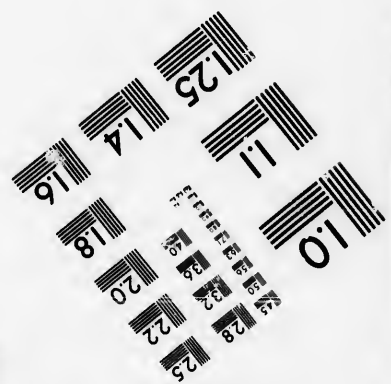
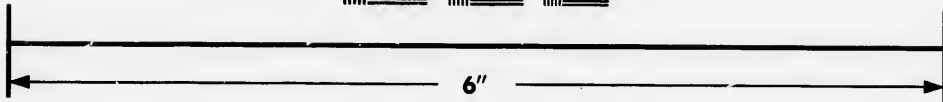
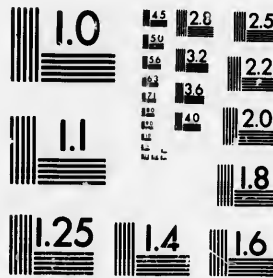


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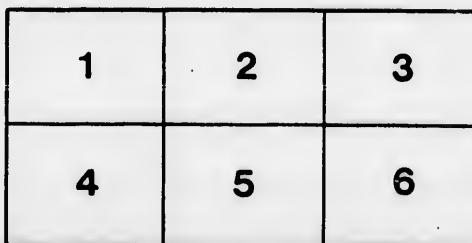
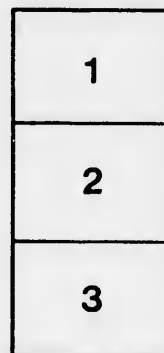
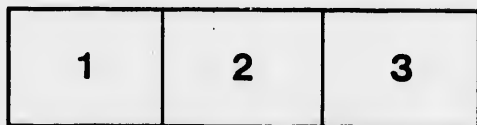
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OBSERVATIONS



UPON THE

LATE PROCEEDINGS

OF THE

HOUSE OF ASSEMBLY

IN THIS PROVINCE.

From the Press of The Montreal Herald.

APRIL—1814.

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OBSERVATIONS

UPON THE

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House of Assembly in this Province.

THE House of Assembly having been lately dissolved, their proceedings are now matter of history, and a fair subject of animadversion, without other restraint than what truth may impose.

The usurpation of the whole Legislative power, aimed at by that body, under the direction of a few ambitious and factious members; and the direct attack upon the independence of the Judiciary, by the open attempt at destroying the public confidence in it, by artificial clamour and gross misrepresentations, have greatly alarmed all who feel a warm interest in the prosperity and tranquility of the province.

During the late Session, they proceeded towards the attainment of their object, almost without disguise.— Their first measure being a Bill to disqualify the Judges from

from being made Legislative Councillors, struck at the root of the King's prerogative, not only as acknowledged by the Constitution of Great Britain, but as expressly provided for in the Constitutional Act of the Canadas.— There is no principle more clear, than that the King, by the former, can confer the honor of the Peerage, and a consequent seat in the House of Lords, upon whomsoever he sees fit; and that the Judges when made Peers, sit there and vote as Peers:—and it is alike clear, that by the latter, whomsoever He sees fit to call to the Legislative Council, has a right to sit and vote therein as a Councillor. A Judge in such a case, votes as a Councillor, in like manner as a Peer does in England; and in neither case as a Judge.

But independent of this violent encroachment upon the royal prerogative, the Bill was objectionable on the ground of its attacking a fundamental principle of the constitutional act; it being an absurdity to suppose that the power constituted, can alter the act of the constituting power, unless in cases expressly permitted by that act; else the constitution given by the supreme Legislature, might be altered into that of France, or the United States: if the caprice of the assembly so thought fit.

Not contented with this, the assembly felt so indignant, that the Legislative council should dare to think for themselves, in opposition to their views, that when the Bill was very properly laid aside without discussion, (as the title bore on its face a positive usurpation of power) they Resolved that the Legislative Council, by rejecting their Bill thereby proved the propriety of it—

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This is an argument so directly at variance with common sense, as to be unworthy of an answer; but the Resolve proves the intention of usurpation; as thereby neither established principles, nor the rights of another branch of the Legislature, co-equal in power with themselves, were to presume for a moment to resist their *fiat*; and consequently a registration, *pro forma* of the Acts of the Assembly, was expected to be implicitly executed, under the penalty of its displeasure. This was holding the council even cheaper than Bonaparte holds his dumb legislature, for they are allowed to reject in *toto*, but must not alter, amend, or reason, upon what is presented to them.

Next came the outrageous proceedings respecting the Judiciary of the province. Under pretext of an Enquiry into the exercise of the powers vested in the Courts of Justice, respecting Rules and Orders of Practice, by more than one provincial statute, as well as by the constitution of all courts, and the law of common sense—they proceeded to pass Resolutions against the whole of the Judges (the dignified and wise judge of Three Rivers alone excepted) containing a direct averment of perjury, and then select only the two Chief Justices as objects of Impeachment.

All these Resolutions were carried by acclamation, in violation of every principle of justice and decency; for let it be observed, to the eternal infamy of the accusers, that not a particle of proof was adduced in the assembly. An Impeachment followed, and that nothing might be wanting to complete the climax of injustice and oppression,

tion, the Governor was addressed to inflict immediate punishment upon the Chief Justices, by suspension from their offices, upon mere *ex parte* allegation, without a trial or proof.

The Governor, in conformity to his duty, refused to do; whereat the Assembly took fire, and with equal indecency, falsehood, and precipitancy, voted him to have acted unconstitutionally, and in violation of their privileges. Supposing that they had a right (as they say) to offer advice, does it prove that such advice is to be followed; and especially if offered, as in this instance, in violation of the Constitution, and in contempt of every principle of justice, which enjoins that trial and conviction must precede punishment. The insolence of this faction in the prosecution of their usurpations, is insupportable.

The King cannot remove or suspend a judge in England, but upon a joint address of the Lords and Commons; and yet the Governor is called upon to suspend the Chief Justices, upon a vote of the Assembly, unaccompanied by an atom of proof before that House, merely to indulge the personal resentments of persons, to whom the decision of a disputed account, involving a thousand pounds, would not perhaps be referred by ten people in the province.

The Leader in these measures, has the reputation of being an able municipal lawyer, and in his own opinion, is superlatively so; for neither judge nor advocate must presume to question any point whereon he sets his heart,
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without risking insult from his overbearing and headstrong disposition.

His conduct however in the House of Assembly proves, that he is a Tyro in constitutional law—or if it be said that he knows better, but misleads others who are ignorant, it is saving his head at the expence of his heart: perhaps from having received his early education in the United States, he there imbibed principles at enmity with those which ought to govern a balanced monarchical constitution.

It is a monstrous and intolerable usurpation in the assembly, to arrogate to itself the right of deciding upon the interpretation of existing laws.—The judicial authority can only do so, and from their decisions there is a regular gradation of appeal to the court of last resort:—by what singular inconsistency in human nature, is it, that loud pretenders to patriotism are always tyrants in disguise? Look at the conduct of the brawlers in the assembly, when clothed in a little brief authority.—Have they ever shewn mercy where they conceived they had power, and durst exercise it? and it is the universal opinion, that the leader of the impeachment, were he possessed of power, would execute it with unrelenting rigour.

It has been a matter of wonder, why so much violence has arisen, from a cause visibly so disproportionate, as the alleged stretch of power in the judges respecting the rules and orders of practice.—Those rules and orders had substantially existed for a great number of years,

before the periods alleged in the accusation, although revised and republished at those periods—besides they had been found eminently useful in correcting former abuses—and no one had ever preferred a complaint of the effects of their operation, after years of practical experience by those now loudest in clamour; until the session preceding the last, that a few members laid hold of them from party views and motives, as will herein after be explained.

But if the judges were mistaken about the extent of their powers under the statutes conferring the same, the remedy lay in a narrow compass, and was applicable in quiet by a short legislative act, to explain such powers, or to enact other rules and orders:—This was the true course of remedy, and would have been effectual as to public utility; but by such a mode, there was no field for clamour, or for the indulgence of private revenge.— Besides the mode pursued served also as a link in the chain of general usurpation and intimidation; and would, if successful, render the judiciary and every public officer wholly dependent upon the assembly.

By the mode pursued also, the public was still, left to suffer (what inconsistency if any suffering there be!) under the said rules and orders; because the judges if they have a due sense of their duty, and firmness to execute it in contempt of artificial clamour; must continue to act upon those rules and orders, until they are altered by themselves, or by a superior competent authority.

Can any man therefore, whose reason is not perverted
or

or understanding blinded by party views, believe, that the public good had any influence upon the course pursued? If he does, I entreat him to ponder upon the present situation of the country, under circumstances of threatened and expected invasion; and then to read with attention the printed proceedings of the assembly, where high sounding and outrageous abuse of the Judges in the guise of accusations is found; but not one solitary proof of corrupt motive or conduct in the accused.

I might safely rest the defence of the Judges upon the shewing of their accusers, as from those printed proceedings it is evident, that the real object of the Rules and Orders was to accelerate justice—protect the people against endless law-suits with enhanced expences—and to discourage appeals for the mere purpose of delay, which had been too prevalent.

The real origin of the proceedings against the Judges, may be traced to the following pure and virtuous source. The leader of the Assembly had been under great obligations to the Chief Justice of the province, but from some unknown cause, a *hatred* against his benefactor commenced, which continued on the increase, until he was removed from the *Solicitor Generalship* by Sir James Craig, when that hatred became deadly and unrelenting, under the pretence, that as the Chief Justice's brother was appointed to *that office*, he must have been the adviser of the removal:—Now the fact is, that the Chief Justice knew nothing of the matter, nor was it offered to his brother, until after it had been refused by a gentleman of the bar at Quebec, now a Judge there. The present

present moment presented to the Leader, a favorable opportunity for revenge, as he saw, that others in the House, from a like impulse, would act against the Chief Justice, from motives wholly unconnected with his conduct as a judge; although not daring to avow them openly, *this clamour* would serve as a cloak, notwithstanding it had no existence, until excited by these worthy and patriotic guardians of the public weal.

In respect to the Chief Justice of Montreal, it will be recollected, that at the first levy of the embodied militia, immediately preceding the war, difficulties occurred in different places, but more especially in the island Montreal, and which were eagerly caught at by the evil minded, who under-hand blew the coals of discontent.

The Leader, and other members of the Assembly, were strongly suspected of being in the number of those who gave secret advice on the occasion, and insinuated that the Militia Act might be resisted, as printed copies thereof had not been sent to the Captains of Militia.— The consequence was, that many hundreds of misguided men assembled at La Chine, and part of them in arms, to rescue the Militia drafts.

This insurrection being forthwith met and quelled by the humane promptitude used on the occasion (for indecision in civil commotion is cruelty) and to which the Montreal Militia, to their eternal honor, essentially contributed. The deluded people came in crowds to make their submission to the Governor, and to ask for pardon, which was granted, excepting to the ring-leaders,

ers, whom it became indispensable to the public safety to bring to trial.

They were tried and convicted, notwithstanding every effort of their Counsel, who from the cause above-said, and from having made the offenders believe *that not a hair of their heads should be touched*, became outrageous at being so foiled. From this moment the virtuous junta determined on doing their utmost against the Chief Justice of Montreal, whom they supposed to have been a main adviser of the promptitude above-said.

As the first step in the offensive war, so determined upon, a prosecution was entered by the leading Counsel against the said Chief Justice, for refusing a Habeas Corpus at the instant he applied for it; but the returns being incomplete, it was delayed until the defect should be supplied. Instead of remedying the defect resulting from his own negligence, he obstinately persisted, and instituted an action, wherein he was cast here, and afterwards in appeal at Quebec.

These judgments were mortal offences in his eyes, and the desire of revenge upon the Chief Justices being now extreme, it became a question with him and the other Counsel for the prisoners, and leaders in the Assembly, how to carry the same into execution. Secret conferences were held, and the plan of operations arranged, to which the *virtuous Judge of Three Rivers* (oh shame where is thy blush) gave his sanction.

In consequence, the Rules and Orders of Practice in all the Courts of the province, but *his*, were hit upon, as the means whereby an artificial clamour could be excited, if adroitly managed; and punishment they determined should follow as a matter of course, in spite of all other interference, by virtue of the arrogation of all power, then in the course of usurpation by the House of Assembly. For it was becoming a common practice in that House, whensoever any of the other branches presumed to differ in opinion from them, a vote of censure for a violation of their privileges should follow. Thus acting as if none other had privileges or rights to assert; and as if they themselves had *no duties* to perform, or any bounds to their privileges, but their own caprice.

For many years back it has been evident, that a few ambitious and factious individuals, generally devoid of property and character, have been aiming at governing the province, through the medium of the House of Assembly, by brow-beating all opponents.

Under this general principle, brought into more immediate action, by the above motives for indulgence of private resentments; the *Judiciary* has been attacked in *toto*, because whilst it remained independent, a check to their views would exist; but if public confidence *therein* could once be shaken, and a dependence on the Assembly from fear or otherwise, be established, then there would be an open field for all ulterior operations, provided the Legislative Council could be overawed,
and

and the Executive be imposed upon by false pretences, and fine but hollow promises.

It is matter of serious reflection, to contemplate in the late intemperate and unprincipled accusation of the whole Judiciary, what a refinement in injustice has been practised, by selecting only the Chief Justices as objects of immediate vengeance, and suspending over all the other Judges, (although alike guilty, if guilt there be) the foul accusation against them; thereby denying them an opportunity of meeting and repelling the charges made against their honor and integrity; for the annals of Parliament do not afford an instance, until now, of an Impeachment voted, without previously adducing proof before the Commons, of corrupt conduct or motive in the party accused.

Against the real patriotism of the Leaders in the last Assembly it is conclusive proof, that with the threats and expectation of invasion before their eyes, they refused to appropriate the supplies needful for the defence of the province, and for the comforts of the militia embodied for that defence, unless the other branches would agree to fleece the public of £4000—to go into the pockets of the aforesaid leader, and other mock patriots, to be employed in hunting down the Chief Justices. What can be thought of men who would add to the risk of our being over-run by the enemy, by such refusal of supplies, rather than postpone the indulgence of personal resentments. If this does not open the eyes of the public, to the true character of those factious men, I know of nothing that can.

It is vain to throw the blame on the Legislative Council, on pretext of privilege, and that they had no right to amend a Money and Appropriation Bill. This is a mere subterfuge. It was not an amendment—it was a separation of objects in the Bill, which ought not to have been blended together; for what connexion is there between the defence of the country against invasion, and the attack of the Judges without proof of criminality. This they well knew, as also that there was an instruction from the Crown communicated to the first Provincial Parliament, that if the same Bill contained objects in their nature distinct, it would not receive the Royal Sanction:—as it anticipating such an abuse, as has been now fatally witnessed.

The Debates in the Assembly being often in a style more resembling the rhetoric of Billingsgate, than of sage Legislators, have done great mischief, by exciting popular passions, and promoting discontent upon subjects, where none previously existed; for it is notorious, that the province is tranquil and harmonious whilst the Legislature is under prorogation, (the period of elections excepted) but the moment it sits, then the evil spirits are at work to produce irritation, by holding language in the House of Assembly, that dares not be held out of doors.

It has been remarked, that the boldest speakers in that House, have, personally, done the least in defence of the country, as they either skulked from Militia duty, under a privilege of exemption therefrom; or if they at first accepted of militia appointments, under the hope

of

of pocketing money, without risking their persons, they sneaked out of them by resignation, on the prospect of danger.

Most fortunately, there is such a rooted enmity in the great body of the people against the Americans, that the militia have nobly done their duty in the field, notwithstanding the bad example of many of the Representatives in the Provincial Parliament; and will, I am persuaded, continue to do so, in spite of the pestelential efforts of a few who are labouring to divide us, aided by a supposed agent of Mr Madison.

The state of the Province, however, in respect to itself, presents a perfect anomaly in government, which will require a remedy from the Imperial Legislature; as it is quite impossible, that the public business can be carried on, if a few ambitious and turbulent men, of no established character, or property, availing themselves of the prejudices and want of intelligence unhappily but too prevalent, and laying aside all consideration of the important duties of a Representative in the Provincial Parliament, shall only be studious to turn the situation to party views, and private account; and when possessed of office and emolument, still thwarting every measure of Government, that they are not allowed to dictate.

If this state of things be permitted to continue, there is an inversion of all order—industry must decline, or be destroyed, from want of security to the fruits of it—every thing respectable must fall into disrepute and dis-

appear—whilst turbulence will become the road to office, and anarchy and crime follow as necessary consequences.

The people of this country have much happiness at stake, and seem yet unaware of the danger into which a designing party is leading them. It is impossible to exist in civil society with fewer burthens than in Canada—but if the people by their votes at the ensuing Election, shall evince such an insensibility of the blessings they enjoy, as to hazard all, by re-electing men to represent them, such as have governed the Assembly during the last and some of the former Provincial Parliaments, their case is hopeless; and the Imperial Legislature, must then out of tender mercy to the people of this country, deprive them of that constitution, which, well administered is a blessing; but if made a mere engine in the hands of ambitious and factious men, will become a curse; inasmuch as the tyranny of the multitude is of all others the worst; because that tyranny will always be under the direction of the most daring and most unprincipled.

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I shall conclude, by a few parting words to the Leader in the late Impeachments, which are—That happily for the accused, he is going to a country, where bold assertion will not be received as proof—where violence will not be considered argument—and where self-conceit will only pass for its intrinsic worth—and, finally, that it is to a Country, from whose bourne no false accuser returns, but covered with infamy, and in disgrace.

ARISTIDES

MONTREAL, 2d April, 1814.

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