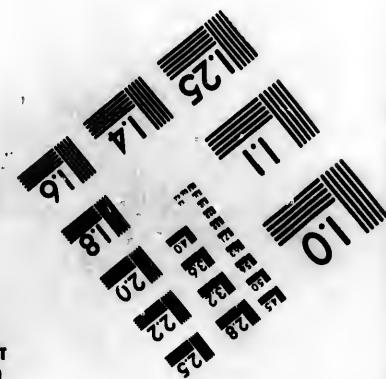
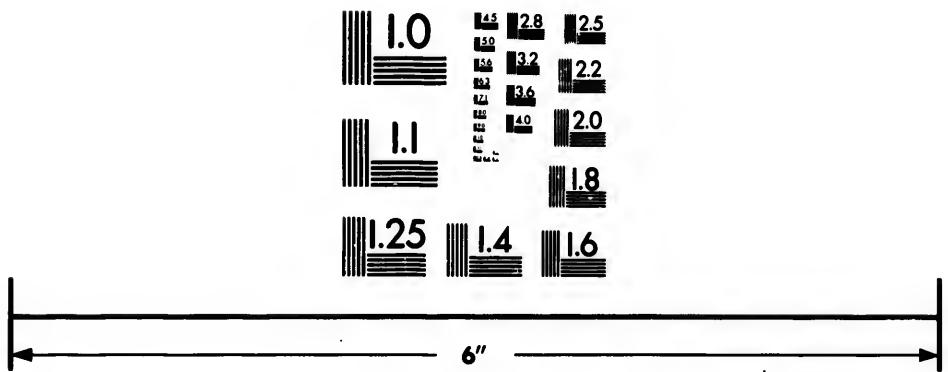
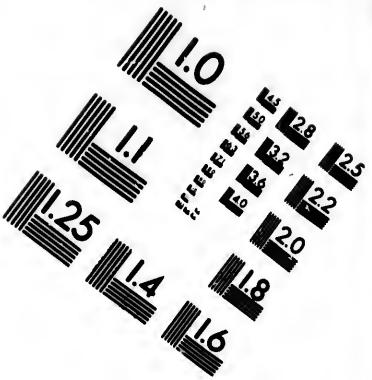


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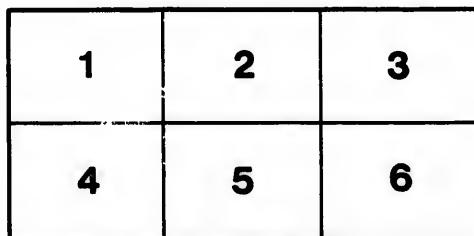
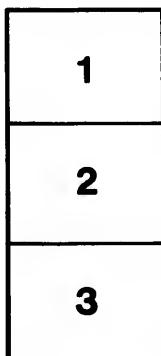
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## REASONS

FOR A

## Corporation;

OR A

**REPLY TO DISSUASOR AND OTHERS.**

WHO

**OPPOSE THE INCORPORATION**

OF

**MONTREAL.**

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**Montreal,**

PRINTED BY N. MOWER,

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1827.

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## INTRODUCTION.



*THE following remarks have grown into a pamphlet, when their author first intended them merely as an answer to a newspaper communication, on the subject of Corporations. The author of "Dissensor" being the only person who has hitherto condescended to employ reason, as a mean of advocating the negative of the question in dispute, the motives of opposition to a beneficial measure, became thus to a certain extent disclosed. These are freely examined—tried by the test of first principles—and of universal experience. This, on the other side of the Atlantic, would have proved a superfluous task, because the correctness of the inferences deduced from them, are universally acknowledged. Here, however, where principle and deduction seem alike overlooked—where assertion, at least on the present topic, assumes the place of argument—and dogmas are employed for proof; the writer, at the risk of being tedious, has quoted historical authority, and referred to constitutional analogy, as the fairest measures, by which the utility of the proposed Incorporation of Montreal ought to be tried. He regrets that circumstances have prevented him from consulting the authorities to whom he in different places alludes. This, however, is of the less consequence, as the maxims vindicated have been long established, and are so applicable to all states of society, that no verbal inaccuracy on his part, will affect the substantial justice of the principles from which they are deduced.*

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## REASONS, &c.

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THE public journals have recently contained some observations, for and against, the expediency of incorporating Montreal; and a good deal of verbal opposition having by a few individuals in society been expressed, without so far, as it can be discovered that expression being accompanied by a shadow of reason, it had perhaps, been uncharitably concluded, that the opponents of the measure had embodied the fury without the inspiration of the sybil. Oracles no doubt have been abundantly poured forth by Canadian sages, predicting the inevitable and fatal effects, which must result from the adoption of the obnoxious proposal. Oracles in Europe, even among the vulgar, have been out of repute since the fane of the Pythian Goddess was trampled into dust by Alaric and his Goths, fifteen hundred years ago. However, force in the first place, and the progress of opinion in the second, might *there* induce, the substitution of reason for blind belief, as the measure of determining the justice of acts, on the result of events, the same causes may not have operated *here*. It may be, that in the new world, in this age of discovery, the process of ordinary reason is quite superceded by the infallible *faits* of the human machine, like the far famed mathematical instrument of Laputa, which thus becomes the mere organ, thro' which the quintessence of wisdom is ground out in sage apothegms, for the instruction of an admiring generation. This intuitive perception of truth, however, being a quality belonging to few, without the labor of intermediate demonstration, to estimate the correctness of the inferences to be deduced from any given dogma, the publication of Dissasor's letter may be deemed a fortunate event for the disciples of the old school of deductive reasoning. Its author has at least, partially betrayed a disposition to have recourse to the exploded system of Baconian demonstration,

altho' its contents more generally savour of the oracular school of Canada. Still, the *experimentum crucis*, has been attempted to be applied, and as will be shewn in the sequel, has reduced the propositions of the writer *ad absurdum*. Amid the fumes of the oracular influence, it may be extracted from Dissuasor's epistle, that the incorporation of Montreal, is impolitic, because—first, Canada is a conquered country. Secondly, because that measure will be apt to generate faction, and its concomitant enmities ; and thirdly because, it is in itself premature. These objections will be examined in their order.

The history of mankind has shewn, that when the fortune of arms has obtained for one nation, the conquest of another, the surest mode of uniting the conquerors with the conquered, is to abolish all invidious distinctions between them, to bestow upon all, equal social, civil and political immunities. This tends to allay the feelings of bitter resentment entertained by the conquered against their conquerors—to assuage the feelings of mortification and sorrow, their conquest may have caused—gradually to encourage free and unrestrained intercourse between the natives of rival communities—to assimilate their manners and language, and in time to obliterate those national distinctions and peculiarities, which, while they do prevail, generate perpetual discord, and foster opposing prejudices. So long as these continue to exist, the justice and expediency of public measures, are not tried by their real merits, but by the supposed, and separate interest of a divided people—by the means of gratification they furnish, for the indulgence of mutual antipathies—by the safeguards they establish for the preservation of the monopoly of civic and political authority to the dominant party, on the one hand ; and the chances they may bestow, for overturning exclusive pretension, and possession on the other. All history has shewn, that this mode of proceeding is alike natural to individuals, and parties, because none like to relinquish what is possessed, and none wish to be excluded, from a participation of privileges to which they have an equitable claim. By such means, however, one party is gratified and enriched—the other is mortified, and it may be impoverished. It may prove consistent with the interests of the few to oppose an equality of par-

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ticipation, in all civil and political immunities. It is certainly for the interests of the whole, that these should be universally, not only in name, but in substance, enjoyed.

We have the authority of all the Roman Historians, from Livy down to Procopius, for inferring that this was the policy, which, to a certain extent, the government of Rome, for nine or ten centuries wisely pursued. The principle of a representative Government was not comprehended by the ancients ; but during the existence of the Roman republic and empire, it was common to confer upon conquered districts and countries, the privilege of Roman citizens. It was also common to leave the local government of cities to *Magistrates appointed by the inhabitants*—to preserve to them their civil and religious privileges ; and even, to install their Gods among those of the Roman Capitol. It was common to appoint their judicial Magistracy from among themselves. It was common to secure their properties and persons by the same sanctions, which protected those of the citizens of Rome. No doubt rapacious governors occasionally oppressed, and we have a memorable example of the fact, in the case of Verres, who will live in perpetual infamy in the immortal oration of Cicero. But generally, the interests of society were consulted, and an assimilation of manners, language, and customs grew out of the international connection ; and thus the benefits of conquest were secured without its odium ; and a wise and ambitious people were enabled to extend and consolidate a mighty empire. Their power attained ; and their enlightened policy secured its preservation.

A succession of barbarian hordes occupied and wasted in Rome's decline, the provinces of the Empire. They exercised wantonly, the miscalled rights of conquest ; and violated the laws of humanity. Their power was thus established on a perishable foundation; because they pillaged, persecuted, or slew the suffering people. The next tide of barbarians easily defeated their impolitic predecessors, softened as they were, by the luxuries which conquest had secured, or enervated by the influence of a more genial clime. A "*Gens Germana feritate ferociore*," according to Vellicis, by a more liberal policy secured the permanent conquest of Upper Italy ; and the Lombards to the present day, give a name to one of its most

extensive provinces. They imitated the humane and enlightened policy of the Romans, and obtained an Empire in gaining the affections of the people.

Upon the conquest of England by William I. in 1066, the rights it conferred produced the most grievous wrongs. The people were oppressed and persecuted. Their soil was seized—their property plundered. The power of the Baron deprived the Crown of authority. The strength of the former, was the source of the weakness of the latter. From this cause sprung the rights of the people. As a counterpoise to the pretensions of the Barons, the towns obtained political immunities from the Sovereign. This gave them weight in the Government. That secured them in the privilege of regulating their own local interests, through the medium of *civic corporations*. The merit of the Barons at Runeymede, who forced from John the Magna Charta of our rights, is not to be dispraised ; but it is but too consonant with the selfish feelings which are known to control the mass of mankind in all stages of society, to presume that these Barons pertinaciously clung to the substantial power they possessed. Indeed the history of these times show how unwillingly they recognized the political and corporate rights, which a counter-balancing interest on the part of the crown had been the original cause of conferring. The Barons of Henry 1st deprecated the extension of popular rights, and civic privileges, because the Anglo Saxons were a conquered people, and should not be permitted to regulate their own affairs ; and now, after the lapse of seven centuries, the same doctrine is propounded in Montreal. The testimony of Ancient History is against its admission ; the authority of the earliest English annals is opposed to its adoption. Even in those early times, three centuries before the discovery of the art of printing, the descendant of a conquering monarch deemed it expedient to confer upon an ignorant community political and corporate rights, and the greatest advantage resulted from their introduction by the general content they diffused—the means of practical oppression they removed—the stimulus to industry they awakened—the ultimate union of the descendants of a rival people in the cause of civil liberty, they occasioned. What would a contrary policy, even in those rude times have caused ? Oppression, degradation, discon-

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tent, resistance, abandonment. Indeed we know that such results, ensued, from the invasion or usurpation of civil rights by arbitrary princes. The country has been deluged with blood, the development of its resources have been cramped, general misery indefinitely perpetuated, and at last, these rights by the people have been reclaimed, at the point of the sword. This cannot happen again, because the government is wise from experience, and liberal from principle. Yet, in this town in consequence of the opinions entertained by some individuals, we are under the humiliating necessity of recommending the policy of our Norman kings to the intelligent subjects of civilized, free, and enlightened England.

Farther, it will be universally conceded, with Hobbes, and Locke, that men sacrificed a portion of their natural liberties, only that they might enjoy the remainder unimpaired. This is the object of all good governments, and its principle is practically exemplified by the enactment, and administration of such laws, as the interests and necessities of the people require. This is more particularly the object, in a colony, as the mother country regulates the intercourse with foreign nations. Whatever pertains to the enactment of general laws, to regulate the conduct of the whole community, belongs to the legislative branch of the constitution, whatever to their administration, to the judicial, to their enforcement, to the executive. But it comes not within the ordinary duty of all, or any of these branches of the general government, to take cognizance of the municipal affairs of districts or towns, unless so far as the constitution of the authority by which their local matters are to be governed, is concerned; and that, from the obvious consideration, that the exercise of such functions is incompatible, with the interests of such societies. The principle of government, like every other, is founded on utility, and if citizens can more beneficially regulate the local interests of a town than the distant general government, the duties attached to that regulation should devolve upon them, or their constituted representatives. The information of the general government, must be defective as compared with that of the resident citizens; their interest in its welfare is obviously more remote, and their attention to its concerns is therefore, less likely to be awakened. The authority of the gene-

ral government has been bestowed, for the purposes of general administration, not for that of minute civic superintendence. This doctrine is universally acknowledged in Europe. In France most are aware, it has been violated for political purposes, since that country has obtained a representative legislature. Be that as it may, the soundness of the contrary general principle, as applied to a British colony, much more extensive in space than the mother country itself, containing towns remotely situated from the seat of government, is yet to be ascertained. From the old principle on the other hand, recognizing the establishment of representative government, and the people being best qualified to decide upon their interests, the consequence appears indisputably to flow, that the citizens of a given town should have the appointment of those public functionaries, by whom their local affairs are to be administered; and that these officers should be responsible to the community at large for their conduct while in office.

Another principle of a free constitution is, that grants of money to the government can alone proceed from the people or their representatives. The Revolution of 1641, confirmed by that of 1688, has determined the contrary principle to be *Tyranny*.—The interests of society therefore require, that the popular branch of the legislature should vote such grants of money, as the general purposes of government require. The imposition of a specific tax however, having for its object the assessment of the inhabitants of a particular town, for the maintenance of all the branches of its police by the legislature, is a virtual infringement of the acknowledged general principle. If then happens, that an immense majority of the legislature tax a certain district or city, *without their own consent* for local purposes, which apply neither to themselves nor to their constituents. And on the other hand, supposing that the general government appropriates a certain sum from the money of the people to this local object, then that money would be grossly misapplied, and it cannot be presumed that their representatives would sanction that misapplication. In this dilemma therefore, the Legislature, in the spirit of the constitution, should authorize, by special acts, as the exigencies of separate towns require, the communities of such, to tax themselves. They of course will be the

fittest judges of the necessity for so doing. Equity requires that the expence of maintaining their police, should devolve upon themselves ; and experience testifies that men will more willingly grant money to be expended on the promotion of their own security, comfort and convenience, than authorize, if they can prevent it, the imposition of such a tax, and the appropriation of its amount by others. From the one source, it is willingly bestowed, because its expenditure is efficiently controlled. From the other it will be peremptorily withheld, because its distributors are neither appointed, nor its expenditure controlled by the people themselves. In the latter case, discontent is generated because personal responsibility is more likely to be superseded, the abuse of the trust reposed, and the misapplication of the money granted, more likely to happen. In the former, contrary effects will more probably ensue, provided that the citizens faithfully discharge the duties which they owe to themselves. These principles have been recognized in England, since the days of Runymede ; but it appears that skimming the bosom of the Atlantic, operates upon Englishmen as the waters of Lethe did upon the ancients, leading to the general oblivion of doctrines universally acknowledged to be constitutional there, and of principles the utility of which never has been questioned. It was really difficult to comprehend from what motive proceeded the opposition to the proposed incorporation of Montreal, until Dissuasor has not very unequivocally made the disgraceful and humiliating avowal, that John Bull though a free-man in England, was disposed to play the tyrant in Canada. This is alone applied to the author of the Epistle in question. A government emanating from the British crown, is well known to be imbued with principles of totally an opposite description, to be liberal in its tone, just in its character, and enlightened in its administration. Policy alike with feeling make them reject such arbitrary and unjust distinctions. They are too deeply imbued by the spirit of British Law, and the dispensations of British justice not to reject with scorn, and to condemn with indignation, such unconstitutional insinuations.

The writer it seems, not in the flights of his fancy, but as he too evidently discloses, in the sober calculations of his reason, conceives

a "town, the population of which is mixed and divided, deriving its origin from different and once hostile nations, where one portion of its population, by a swinging majority outweighs the other." This, so far as English and Canadians go, is willingly conceded ; and it likewise may be allowed, that some of the English have not abandoned the swaggering tone of conquerors, that the Canadians feel resentment at its expression—and that, in some instances, the latter from feelings of party have opposed measures good in themselves, and likely to promote the interests of the people. But what has this to do with the present question, one of mere police ? Suppose that an English minority proposes to obviate acknowledged defects in the condition of the town in an incorporated Common Council, and that the Canadians (whom it is to be presumed are people of ordinary sense and understanding, as anxious for their own security, comfort and convenience as other civilized human animals,) direct their representatives in council to oppose the grant, from the expenditure of which such advantages are to result, can this decision make matters worse than they are ? The sensual organs of the inhabitants, independent of their understanding, will answer the question. The dumb and irrational creation, give it a practical answer. The moment they enter the city, their legs totter, and their nostrils snort. What will the ironical disclaimer upon human perfectability say to this ? What has so gross a matter of sense to do with his metaphysical abstractions of man exceeding himself, when in reality he should be less than himself, and even deprived of his animal qualities, to feel at ease when traversing Montreal. The town cannot be in a worse condition, and it therefore becomes the opposers of the projected incorporation to propose a remedy. The one suggested by Mr. McGill is the constitutional remedy ; but suppose any other be proposed by the enemies of incorporation, what will be its probable fate ? One of the branches of the Legislature, by whom it can alone be enacted, is composed of a great majority of French Canadians, and if any deductions can be inferred from the allusions or enigmas of Dissuasor, (opinions they cannot well be called,) no such law *a fortiori* to the case of the people refusing to tax themselves for the Town's improvement, will pass. Such a law will involve a grant of money

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from the control of the expenditure of which, the citizens of Montreal are to be excluded, and such a law, it may be proved from Dissuasor's own admissions, will be rejected.

Thus : If the people of Montreal are so "mixed and divided," meaning, it is to be presumed by this verbal contradiction, that upon the whole they are hostile to each other, a corresponding feeling, if it proceed not from local causes, will pervade and animate the remainder of the English and Canadians of Lower-Canada.—The general tone of the author's remarks, shews this to be his meaning. Such being the case, it is abundantly evident, that the Canadians elsewhere will sympathize with their brethren here—that their representatives in the lower house, as derived from this body, will share their feelings, and as a consequence a more objectionable measure will be defeated by a Legislature so constituted, when a less would be resisted, from Dissuasor's supposition, by the Canadian inhabitants of Montreal. This mode of argument may not exactly quadrate with the oracular system, but yet without referring to the Baconian, the Aristotelian, or Syllogistical, will prove the fact. Thus :

The Canadians and English of Montreal cannot agree, because they stand in the relation of conquerors and conquered,

The Canadians and English of all Lower Canada stand in the same relation. Ergo, neither these inhabitants nor their representatives can agree. Q. E. D.

The first argument, or rather assertion of Dissuasor, has now been examined. The second that the incorporation of Montreal will prove impolitic, as it may generate and perpetuate enmities, falls to be discussed.

It will be conceded by all men who have examined the structure, and traced the progress of political society, that public inquiry and discussion universally elucidate truth—allay prejudices—extinguish enmities, and, in the end, make men aware of that policy and those measures which may prove most conducive to the general good. The History of the British Government is an evident illustration of the accuracy of the foregoing proposition. Take a few examples. Hampden's resistance to the payment of ship-money established the principle, that the Commons possessed the exclusive right to ori-

ginate pecuniary grants. The principle of the Habeas Corpus Act was for a hundred and fifty years resisted, till it passed during the odious reign of Charles II.—one, as Mr. Fox somewhere remarked, “of the greatest theoretical liberty, and the completest practical despotism.” The right of dispensing with the laws was arrogated, as a function of the indefeasible prerogative, but it cost one sovereign his life, and another his crown, before it was abandoned. Popular discussion matured the public mind, for the reception of the Bill of Rights, and enabled great and magnanimous statesmen to secure their enjoyment, at the hazard of their property and lives. To come nearer our own times, Lord Castlereagh not twelve years ago, declared that however free constitutions, might suit the meridian of England, they were as yet unadapted to continental nations.— His able and patriotic successor Mr. Canning contemplating like a philosopher the changed character of society, and giving like an enlightened statesman form and action to the opinions it has imbibed, has acted upon principles directly the reverse; and hardly four months have elapsed, since Great Britain has guaranteed the free constitution of Portugal against the interference of Foreign powers. No man of sense and information to whatever political party of the State he may belong, disputes now the necessity and justice of the political principles embodied in the three first of the measures alluded to. The last is of too recent occurrence, not to alarm the fears of the timid, the abuse of the ignorant, and the prejudices of the intolerant. All men know that the rights embodied in the three first, not only generated political strife, and private enmities, but in their acquisition deluged the kingdom with blood, cost millions of treasure, and compromised the domestic and social happiness of successive generations. No great public good has ever been attained, but through the medium of much intermediate private misery. Those times have luckily for us long since gone by; yet in the present condition of Canadian society, it is equally conceded to Dissuasor, that no minor public good is likely to be obtained without mutual misunderstandings, enmity, and abuse, such is the frail and self-sufficient character of human nature. But such differences apply only to men, and not to principles, and cannot justify the inference, that the latter

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are to be sacrificed and the public benefits they secure, merely because *men will differ*. If that be a correct political maxim, which *Machiavil* himself has never even espoused, then the corollary to be deduced from it is, that despotic are preferable to free governments, both in nations and in civil communities. Such a principle requires no refutation. Its repugnant character must be apparent to all.

*Dissuasor*, however, has pretty broadly signified, that the Canadians and English mutually dislike each other, and from that fact would it be presumed infer, that in no public measure having for its object, the benefit of society would they be likely to coalesce.—If this be his meaning, (for it really is difficult to extract one from the obscure cloud of vaticination in which his opinions are enshrouded) it proves too much. It assumes the necessity of the interference of some constituted authority to obviate the evils, which he himself at the conclusion of his letter acknowledges to exist. That power, all are aware, by the constitution of the country is vested in the Legislature. The majority of the popular branch of that Legislature, from whom alone the remedy can proceed, is composed of the representatives of those men, who according to him are sure to baffle the object for which a corporation is demanded. If such be the case, they will be much more likely to oppose any other remedy, whose principle implies the renunciation of the right the exercise of which, they were from their dislike to the English, or from any other cause, sure to abuse.—Whether that power be required from the magistracy, or any other specially constituted functionaries, the consequence will be the same. The Legislature too on public principles, as has been already shewn, are more likely to oppose a money grant emanating from themselves for a local purpose, when the distribution of that grant is at the same time to be put beyond the control of the people, for whose benefit it is professedly intended.

The abuse of a good principle is no argument against its use, and therefore none against its recognition and adoption. Much less is it to be inferred, that because the public discussions to which its examination gives rise, creates difference of opinion, personal strife, and even according to *Dissuasor*, occasional family dis-

sensions, are the advantages it confers, from such considerations to be disregarded, and withheld. Such no doubt has been the convenient argument of all tyrants of every age, and country. But surely this is not the era, nor this the country, incorporated as it is, with the British Empire, where so stale and oft refuted an argument against the establishment of popular control as a barrier to the abuse of irresponsible power, or a negligent direlection of public duties, can be successfully enforced. Responsibility to a distant, and to a comparatively little interested authority, has been found in almost all stages of society, to be tantamount to an exemption from dependence and control ; and where a surer and more censorial superintendence can be imposed through the medium of the people, deeply interested in the discharge of incumbent duties, it would evince the extremity of rashness and folly, to prefer the former to the latter. The latter alternative however, the opponents to the Incorporation of Montreal must prefer, if they do not deny the necessity of some alteration in the mode of regulating civic affairs. This no doubt, might be coolly denied elsewhere where no *sensible evidence* is presented for the necessity of such a change ; but he would prove a bold and impudent man who hazarded a contrary opinion in Montreal. If perfection existed, either in the nature or the institutions of men, the necessity for civil and municipal government would of course be superceded. But as it does not, the contingent evils resulting from the recognition of a beneficial principle, will not be deemed a legitimate ground for its rejection ; and for the same reason the inferior benefits, flowing from the operation of a bad, will furnish no rational justification for its introduction or perpetuation, if it have already been unfortunately established. These alternative considerations as applicable to the condition of Montreal, demonstrate the necessity of a change in its civic administration, because more public good must be reapt by public examination and popular control, than what will be sacrificed by occasional differences, or angry discussions; and also because more public evil must arise under the prevailing inactive regimen than what could be suffered, from the nominal tranquility it insures. The silence therefore which an arbitrary administration imposes is no argument for its

support, because its continuance implies the suppression of the opinions, and absence of the control of the people.

The *desideratum* of Montreal seems to be, that there exists no established authority to raise money, to manage public property, to direct improvements, to correct evils, or to redress abuses.— This seems universally admitted; but Dissuasor and it is to be presumed his friends, would nevertheless exclude the most intelligent of those, who suffer from the evils proposed to be removed, from having a voice in the enactment of the measures most likely to accomplish their correction. This may be good constitutional doctrine in Canada; but in England it happens to be called tyranny! If Dissuasor and his more prudent taciturn supporters verbally maintained, that the interests of the English minority, should be preferred to that of the Canadian majority, then the meaning of such an *argumentum ad hominem*, however avowedly contrary to the general interests of the community, would be understood. But then his principle, if principle it can be called, leads to the inference, in conjunction with the considerations already submitted, that *all must suffer because none must be benefited*.

It only remains to make a few observations upon the third reason or assertion, that the measure of incorporating Montreal is premature.

Montesquieu has somewhere remarked, with the acuteness and discrimination which belong to his character "that the propriety of a secret proceeding is generally doubtful. When men therefore withhold their reasons for opposing a proposed public measure, in the face of the community, it implies little want of christian charity to question the purity of the motives, or the reasonableness of the cause of their opposition. No man will question the purity of the motives, of the sage whom Dissuasor has quoted. That his personal respectability puts beyond the glances of the busiest suspicion. It is however much to be regretted, that the wish of an ancient sage had not been realized in the person of his modern brother, and that a window had not been placed in the latter's breast to ascertain what his reasons were for opposing the wise and judicious principles so ably expounded by Mr. MCGILL, in his eloquent and unanswerable speech, delivered at the public meeting ten days

ago. The mind of man not being transparent, nor any other means of discovering his thoughts being afforded, save through the vulgar medium of the tongue or pen, the unaided reason of hearers was of course unable to penetrate the dungeon of sagacity, in which half a century's wisdom and experience were deposited. Men of meaner minds have therefore, only the lights of their own imperfect understanding to estimate the general reasonableness of that opposition to the incorporation of the town.

It is then to be remembered, that the chief object of the incorporation of cities is the promotion of the general peace, interest, comfort, and security of its inhabitants. This is best done according to the opinion of a wise man, and great constitutional lawyer, by the establishment "of a coercive power adequate to create a sufficient obligation." If there be no such authority reposed in any given society, how can its general interests, privileges, and rights be promoted, guarded or secured? The necessity of the power being apparent, officers must be appointed to put it into action. No single unauthorized individual possesses the right of promoting or defending the interests of a community; and besides, most men are deficient in inclination to perform an unaccredited public duty. To insure its adequate fulfillment, the experience of history proves, not only that public functionaries must be appointed for that purpose; but that they must be dependent on, and controlled by the people of whom they are the representatives. Most men in Europe know that the recognition of an opposite principle, must be fraught with public injury; and judging from observation here, it has not been at least, attended with any public advantages. Such is the selfish or indolent character of human nature, that the public officers by whom an exemption from popular and effective control is enjoyed, almost invariably make the performance of their public duties subservient to their private interests, or those of their friends, or negligently discharge, or unwarrantably disregard them. However premature a modern sage, may deem the incorporation of this town, it is established upon the authority of Livy and Plutarch, that a sage of antiquity the founder too, of the laws which govern the intercourse of nations, and the regulation of religious observances, Numa, one of the wisest Kings of Ancient Rome, thought

differently ; and in an early and simple state of society created a civic corporation entirely distinct from the general government, over which he presided. He did it too for the very reason, that the incorporation of this town appears to be opposed, because the population of Rome was composed of a hostile people. His sagacity foresaw that the best mode of extinguishing rivalry and assuaging strife was the constitution of a corporate body, where its hostile members might display their antipathies in words instead of blows, aware that the reason of the prudent and the wise, (which in the end always prevails) would prove the source, from which public benefits would eventually flow. This measure was doubtless accomplished in a sufficiently premature state of society, about seven hundred years before the christian era ; and its citation might appear pedantic, had not its principle been followed out, and matured throughout the rapid progress of Roman conquest. This, by cementing the discordant materials of Roman and provincial society, in the communication of mutual privileges and rights as has been already explained, established upon a sure foundation, the authority of Rome, and promoted the general happiness and prosperity of its Empire.

Dissuasor and his associates, however, may treat with contempt the authority of ancient story, unless perhaps they take for their creed the statement of Tacitus, in which when describing the customs of the Germans, he remarks "*De minoribus rebus principes consultunt, de majoribus omnes.*" The people, certainly, through the medium of their representatives, determine here "*de majoribus*" ; but if, on minor civic matters only "*principes consultant*", the German custom judging from effects, does not apply, as the people have lamentable proof, of the total inadequacy of such a species of superintendence and management. The civil law of Rome thus recognizes in the pandex the constitution and expediency of corporations. "*Neque societas neque collegium, neque hujusmodi corpus passim omnibus habere conceditur ; nam et legibus et senatus consultis, et principalibus constitutionibus ea res coegeretur.*" So much for the practice of the Romans down to the days of Justinian. It must be allowed that Europe, for many years before and afterwards, was

desolated by the Huns, the Vandals, the Goths and other savage tribes, issuing from the forests of the north, and the deserts of the east. They certainly overturned civilized government, and with it corporate institutions. And do our modern sages require us to imitate the example of the hordes of Scythia, or the tribes of Sumatia ? to disregard the interests of the people, for the gratification of blind impulses, or irrational prepossessions. These savage warriors were ignorant of the first principles of government—were regulated by the instincts and the ferocious appetites of nature, and thought only of plunder and of war. Such is not certainly the character of those who granted to Canada the inestimable gift of a free constitution. They surely would wish the inhabitants of Canada, as wants increase, and exigencies require, to enjoy all its concomitant advantages. They surely are not the men who would deny the just and moderate request of the citizens of Montreal to become an incorporated community.

As soon as the first period of the dark ages had passed away, and the first glimpse of reason began to dawn upon benighted Europe, the feudal sovereigns saw the necessity of forming the inhabitants of towns into corporations for their municipal governments ; and before the eleventh century had expired, the authority of History attests, that the greater portion of the continental towns were incorporated. This renunciation of arbitrary power for the public good, is highly creditable to the princes by whom it was conceded ; but though rude and unlearned they had capacity enough to discover, that the local government of particular towns were best intrusted to its inhabitants, and had likewise the self denial to act upon that conviction. In some cases, as has been shewn, in the first portion of these remarks, the motives were not of so disinterested a character, but in many, they evinced great magnanimity in sacrificing a portion of the prerogative they could not beneficially exercise, for the interests of the people. And yet after this we are to be told by Englishmen in America, that the town of Montreal in a period of peace, industry, and intelligence is unfit to enjoy in the 12th, the civic immunities which the inhabitants of Europe obtained and exercised in the 11th century, because it is *premature*. It is about as premature to assume a winter garb, when

the Thermometer is 20 below zero. And it is likewise predicted, that the enlightened government of a British Colony will refuse to sanction a measure, which the despotic sovereigns of the darker ages spontaneously bestowed upon their people. What a libel upon English humanity, intelligence, and liberality!!! Appealing then to experience and common sense, is the petition praying for the incorporation of this city premature? The united voice of intelligent Europe would reply in the negative. With the exception of Dissasor "and some ten followers of his own" judging from the recent proceedings here, America would respond the opinion of Europe. The very savages of the adjacent woods have their chiefs and councils to regulate the local concerns of their woodland villages. Are the Canadians inferior to them, and less capable of governing themselves? Civilization spurns the idea. If the prayer of the Montreal petition be refused, the legislature will deliberately express their opinion, that the Canadians are unfit for discharging a duty for their own advantage, which the inhabitants of Europe were thought qualified to perform three centuries before the art of printing was discovered—when Kings could not write, when Barons could not read, and when of course the people were devoid of all lettered acquirements. Still the perceptions of sense pointed out that clean streets were preferable to dirty—smooth ways to rough—parallel buildings to irregular and confused masses, neat harbours to filthy shores,—safety, in short, to danger.—Their own untutored sense secured the means when they obtained the power to provide for themselves such objects of preference. That power is all that the inhabitants of Montreal at the present day want. It won't do to dogmatize, and denounce the application as premature, unless the nuisances are removed and the defects obviated, while the dogmas are in the course of utterance. Let it not then be said, that the self arrogated wisdom of a few Anglo-Canadians is greater than that of centuries of experience, of the accumulated wisdom of man in ages alike simple and refined, of the testimony of common sense; and of the personal observation of every intelligent European.

These observations, which have been extended beyond all ordinary latitude, from an anxiety to explain the grounds upon which

the incorporation of Montreal is required, may be concluded with a few remarks upon the novel and alarming doctrine which has been recently propounded, that all public officers, and especially Magistrates, are required as a preliminary qualification to office, to pledge themselves indiscriminately, to support the measures of every executive administration. At home such a doctrine would be treated with silent contempt ; but we are not in England, therefore it must be noticed.

The principal object of the Law of the Land, is the preservation of the peace ; for according to the ablest of our constitutional commentators, " Peace is the very end and foundation of civil society." The Executive, Legislative, and Judicial branches of the Government in all free communities, are inseparably divided, and on the latter devolves principally the preservation of that peace so indispensable to the security, interest and comfort of society at large. The varying contentions of men—the hostile collisions of personal interest—the dictates of passion—or the suggestions of prejudice, produce claims and offences, graduated in degree from the most insignificant and venial, to the most important and heinous ; and such considerations impose the necessity upon the government, of appointing a numerous body of Judges and Magistrates, to administer that justice which the passing exigencies of society demand.—These administer the laws *as they exist*. Some are recompensed ; the great majority are not, save in the approbation of their own consciences, or the praise of their fellow citizens. In their individual or civil capacity, they may condemn or oppose any new measure or Law proposed to the Legislature by the Executive Government, or commend or support such as may be, by the latter condemned. As soon, however, as such proposals are enacted into Laws, of course as citizens they are bound to obey them ; and as Magistrates to punish their violation. But does it follow in the first place, that these men are enemies to the fundamental *principles of government*, not in its vulgar sense, as applied to the Executive administration, but in its liberal and constitutional, as applied to the grand depository of our rights in the *Lex scripta et non scripta* of the Realm, because they oppose the particular acts of a given administration ; or because they propose a remedy to acknowledged

or supposed defects in the constitution? Their opposition to the Executive, whether right or wrong may be dictated by the honest conviction, that its policy is contrary to the principles of the constitution—derogatory to the dignity and prerogatives of the Crown, or inimical to the best interests of the people. Or does it follow, in the next place, that such men are to be arbitrarily dismissed from the Magistracy on the *flat* of a Minister of the Crown, because on such grounds, they have dared to impugn his infallibility, or to have opposed his measures? None but an obsequious dependent would maintain the affirmative of either of these interrogatories.—If they are to be maintained, the civil peace of society is not only endangered, by the given popular discontent such arbitrary acts are likely to produce—but is likewise compromised by the unwarrantable dismissal of so many useful and meritorious Magistrates. Thus, suppose that one half or one fourth of the Justices of peace of any given county in England were opposed to the existing administration, (and this is no imaginary calculation,) and that the minister in consequence erased their names from the commission of the peace. The result is, that for the gratification of his own personal resentment, he rouses the discontent of the people by an unconstitutional act, and also wilfully narrows the boundaries of that depositary of wealth—talents—integrity and intelligence, from which the supply of these indispensable public functionaries are selected. No British Minister dares, and none, it may well be presumed, have the inclination, in these days, to have recourse to a measure equally impolitic and oppressive. Such an act would be tantamount to the acknowledgment, that political enmities were to be gratified at the expense of public good; and would imply the avowal of the principle, denied even in the worst periods of English history, that Government was constituted for the benefit of rulers, and not of the people. Such an abominable doctrine has been uniformly disavowed, although in these latter days, there appears two exceptions to the general disclaimer; the dismissal of the Duke of Norfolk from a Lord Lieutenantcy in 1798 or 9, and that of Lord Fitzwilliam from the same office in 1819. Two of the wealthiest and most independent of English Noblemen, high in character, and unimpeachable in integrity, were so treated at seasons of pub-

lic distress and alarm. But it may be inferred, that when plenty and confidence were restored, that the advisers of these measures were heartily ashamed of their adoption. At all events, *Exceptio probat regalum.* The former of these Noblemen died the friend of his present Majesty. The latter was long in his confidence. He is yet an ornament to the English Peerage, and an honour to humanity. Different principles cannot apply to Canada and to England, and if they did, the Magistrates here, in their conduct upon the present occasion, could neither become the object of the Government's jealousy or resentment. Their object is exclusively the improvement of Montreal. The means of obtaining that end have been already stated. They interfere not with the political administration of the country. They deserve well of their fellow citizens. Mr. McGill in particular, is entitled to their best thanks in having originated the proposal, and for having so ably, discreetly and eloquently moved the resolutions at the public meeting. The Executive Government is liberal and wise. The measure cannot but succeed. *Fiat justitia ruat cœlum.*



Another oracle since the preceding remarks were written, has given the benefit of his talents and acquirements to the enemies of incorporation. As this new champion has entered the lists, under the banners of the King's arms, his dogmas may be briefly noticed, as his gorgeous shield might dazzle, where his pointless lance fails to penetrate.

He in the first place, generally admits that corporations have done good both in Europe and America, but as might have been expected, infers that they are totally unfit for Montreal. It may be remarked, that all men are good historical whigs; or if that be a disputable term, friends to the rights of the people. It is only, when sinister interests interfere with indisputable principles, that the latter are attempted to be opposed. Hence rant is used for

reason, by the advocates of such interests, not because these men are senseless, but because they are in the wrong. Thus in the present instance we have it admitted that, in incorporated towns mens' "time and attention" are directed to the promotion of the public welfare, but then the wary defender of things as they are, has omitted to state the cause from which the beneficial dedication of that "time and attention" proceeds. It required little shewdness to infer, that the municipal constitution was the cause of that "time and attention" being thus usefully employed, because in that constitution the corresponding duties are defined, the means of appointing officers established, and regulated, and an efficient control, and responsibility imposed. Public and not *private* interests are attended to, because the principle of all representative government political and municipal, is thus brought into action, of leaving little or nothing to the discretion of individuals, and every thing to the determination of fixed and definite rules. It thus necessarily becomes the *private* interest of a public functionary, however selfish or corrupt his individual character, to discharge the constituted obligation his acceptance of office, is the means of imposing. Discretion is the parent of tyranny, and wherever it exists, ought if possible to be superceded or put down. When too, a more efficient can be exchanged for a less effectual control in the performance of public duties, common sense dictates the preference of the former to the latter. These are maxims, saving among the oracles here, universally acknowledged to be constitutional, and apply as has been elsewhere shewn, in favor of the incorporation of this town.

How then does the champion of the Gazette get over their actual application? Not by disputing their correctness; but by begging the question, and assuming the existence of an evil principle which is to render unavailable their application here. There reigns a faction in this province, he authoritatively announces, which is the enemy of all public good, and which alone seeks its own aggrandizement at the expense of the public interest. Political writers of the best authority, have defined a faction to be a combination of wicked men, few in number as compared with the body of the people, abandoned in principle, restles in character, mischievous in design, and pernicious in action, the enemies of the public liberty

security and peace. Catiline headed a faction when he conspired the destruction of Roman liberty. Jack Cade headed a faction when he overawed Richard and his Parliament. The famous Cubal constituted a faction in Charles the II.'s time, when they attempted to promote their own, to the detriment of the public service. King James himself headed a faction, when he persecuted the Bishops, and attempted, vainly, thank Heaven, to dispense with the Laws.— Cobbet heads a faction, but is to be hoped one without a body, or a tail. Sir Harcourt Lees heads a furious, and would be exterminating faction, innocuous from its violence, and dispicable from its talents. A faction then, is composed of a restless minority of the people, who from deficiency of principle combined with consistency of action, possess the inclination, sometimes the power of committing public injury. The voice of the majority of the people is not the expression of a faction; but when communicated, through their representatives in a free state, becomes the gathered opinion of the nation, legitimately uttered by the constitutional depositary of that opinion. Apply such a definition, not that of the writer, but those of Locke, Bolingbroke, Hume, and Burke, and from their authority become a constitutional axiom, to the state of parties here, and watch its application by the oracle of the Gazette. The faction of which he speaks, is the majority of the people deliberately acting through the constitutional organs of those opinions in the House of Assembly. It is easy to assert that private interests regulate the decisions of that body, as easy, and about as fair as to aver, that similar motives controul the decisions of the Executive Government. Such is the mere abuse of declaimers. But supposing the assertion of the oracle to be true, is that a reason, why an application to this *constitutional faction* should be withheld, for incorporating the Town of Montreal, when as has been already shewn, from the defect of power, or the neglect of public functionaries elsewhere, such a measure becomes indispensable in the opinion of its friends, or something correspondent to it, even in that of its enemies. Has it been ascertained that the House of Assembly will pass no other bill than that, which will convey the qualification of voting for a Common Council man to every 40 shilling a year proprietor, or tenant? If that extension of suffrage

be questionable, let it be limited, not to the aristocratic bound suggested, but to that which may insure a fair expression of the opinion of the intelligent population!

Besides the *ipse dixit* of the champion of the Gazette is no proof of the unqualified determination of the House of Assembly to refuse any other scheme of incorporation. Will they pass no such Bill but that which will secure a vote to 40 shilling freeholders? So seems to say the oracle, if any meaning be attachable to his remarks. Lord Bacon somewhere observes, that a minor species of evidence never should be preferred when a greater can be obtained. Much more then, is a hardy assertion to be rejected for proof proceeding from an anonymous source, when indisputable evidence of its truth or falsehood may be elsewhere procured. Let the question be tried by application to the denounced House of Assembly, and the corporation bill will probably be carried.

The less reason men display in the discussion of public measures, the more *factional spirit* they evince, because it is the essence of faction to consult private, at the expence of public interests, and because in this lamented predicament their advocates must employ sophistry for reason and declamation for argument. It cannot however be asserted, that the enemies to the proposed incorporation of the city, have even attempted to do either. The knock down system is theirs, but it is to be expected that they have missed their aim. In the present instance they prove themselves to be the *faction*, because they are a miserable minority in numbers, and woefully behind in reason. English and Canadians, with the exception of the oracles, and their remnant of votaries, are all united in favour of the measure proposed—All, not even excepting *the faction*, admit the necessity of some change and the want of power to raise money. The remedy has been pointed out by the people in their petition. The grievance is admitted to exist by the enemies of that petition. The Legislature, they must admit can alone apply their remedy. The oracle infers they will alone do it in their own way from the interested composition of that body. Ergo the grievance must continue to be endured. It were even then better upon his own principles, that the people were occasionally disturbed by popular harangues, and popularly “disgusting scenes,” than that their senses should be perpetually assailed with disgusting sights, and

their property and persons continually endangered from the absence of the power and means to obviate existing deficiencies and risks.

The people then according to the oracle, are the faction of superior numbers, but may not another faction exist who prefer their own interest to that of the public, who cling with an irrational tenacity to an exclusive monopoly of power, and its appendages, who think the people unworthy to share in the regulation of their own concerns, who would forego the advantages of a beneficial change, rather than allow them to become the instrument by which it is to be achieved ? *If such a party exist, it is a faction.* If it do not, the measure of incorporation will be triumphantly carried.

In England it is the duty of public men to commune with the people, as often as they or the people deem such a proceeding adviseable, for the purpose of ascertaining the opinions of the people, it may be, of instructing their ignorance ; and the constitution of England is that of Canada. It may be better however, judging from the sneers of the oracle, that the people were kept in ignorance of the principle of the " sovereignty of the people," expounded, as it has been by the genius of Milton, consecrated by the understanding of Locke, ratified by the Revolution of 1688 in Britain, and embodied in the Constitution of 1791 in Canada. As however, Mr. Fox sagaciously remarked, it is one that ought seldom to be remembered by the people, and never forgotten by kings. It may be imprudent to remind them too frequently of its validity, especially if the interests of a country are sacrificed for the benefits of a faction. Thus public disorders and *factions* preferences may go hand in hand. With regard however, to the local government of towns, it is clearly for the interests of the people that the action of this principle should be surrendered to them as already explained, by the general Legislature. They ought to be supreme in the management of their municipal affairs.

The other objections of the Gazette's champion have been already anticipated, and these remarks may therefore be concluded by signifying to him and his friends, that the measures of a faction can never succeed when the *professions of its members are at total variance with their public conduct.* Such gross inconsistency alike awakens the indignation of their enemies, and the utter contempt of their friends.

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