ADDITIONAL PAPERS

CONCERNING THE

Province of QUEBECK:

BEING

AN APPENDIX

To the BOOK entitled,

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

by F. Maseres.

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M.DCC.LXXVI.

ADDITIONAL PAPERS

CONCERNING THE

Province of QUEBECK.

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

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

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

ſons for thinking ſo were as follows. In the firſt place, the Engliſh and proteſtant inhabitants are pretty numerous, being not fewer than three thouſand ſouls, excluſive of the king's troops in the province, as has been found ſince the paſſing of the late Quebeck act by an enumeration that has been made of them. This number, though far ſhort of the number of the Canadian or French inhabitants of the province, (who are thought to be 120,000, or perhaps 150,000, ſouls) is yet ſufficiently large to afford to the Canadian freeholders a very ample choice of perſons to repreſent them in an aſſembly of the province. And among them would be found many perſons very well known to, and much reſpected by, the Canadians; I believe, I may venture to ſay, more ſo than the generality of their own nobleſſe or gentry, or even merchants. For many proteſtant inhabitants have married Canadian women, who were bred in the Roman-Catholick Religion, and who for the moſt part ſtill continue in the profeſſion of it, without being in the leaſt degree ſollicited or importuned by their huſbands, or any of their huſband's friends, to abandon it: which creates a familiar intercourſe between thoſe huſbands and the Roman-Catholick relations of their wives. Thus, for example, Captain John Fraſer, of Montreal, lately one of the Judges of the court of common-pleas for that diſtrict, and ſince the

1ſt of May laſt one of the new conſervators of the peace for the ſame diſtrict, is married to a daughter of Monſieur Des Chambaud, a conſiderable French gentleman of that place, and who is owner of a valuable ſeigniory. And another daughter of the ſame gentleman, who was the widow of a Monſieur De Longeuil is married to Mr. William Grant, a proteſtant Scottiſh merchant at Quebeck. A daughter of Monſieur De Belleſtre, a Roman-Catholick gentleman of note at Montreal, who is appointed a member of the new legiſlative council of the province, is married to Major Wharton, an officer of the army. A daughter of Monſieur La Corne de St. Luc, another and moſt zealous Roman-Catholick, who is alſo a member of the new legiſlative council, is married to Major Campbell, another officer of the army. The daughter of Monſieur Beaubien, a Canadian merchant at Quebeck, a moſt zealous Roman-Catholick, is married to Monſieur l'Eveque, a French proteſtant merchant at the ſame place, who is a member of the legiſlative council. The ſiſter of a Roman-Catholick gentleman of the name of Reverin is married to Mr. Antill, a native of New Jerſey in North America, who is a proteſtant and practiſes the law at Montreal. And many more ſuch inſtances might be produced of proteſtants married to Roman-Catholic women, and who are conſequently, for the moſt part, much connected with the

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Roman-Catholicks of their wives families. Others of the Engliſh and proteſtant inhabitants have gained the reſpect and eſteem of the Canadians by their upright and diſintereſted behaviour as Judges of the courts of Juſtice, Juſtices of the peace, and Lawyers of ability and integrity. Thus Mr. Martehl by his upright and impartial conduct formerly as a Juſtice of the peace at Quebeck, and of late years as a Judge of the court of common-pleas at Montreal, (but more eſpecially in the former character of a Juſtice of the peace) has gained the reſpect and confidence of the Canadians to an high degree. And the ſame may be ſaid of Mr. du Calvet, a French proteſtant of conſiderable fortune and an unſpotted reputation at Montreal, who has acted with great integrity and diſintereſtedneſs as a Juſtice of the peace in that place; and of Mr. Du Mas Saint Martin, another French proteſtant, that was a Juſtice of the peace at Montreal; and of Captain Gugy, an officer on half-pay, who is retired to the country and lives at Maſchiche, 18 miles to the South of Three-rivers, upon part of the ſeigniory which he bought, and has cultivated and improved with great induſtry and ſucceſs, and who has executed the office of a Juſtice of the peace to the great advantage and ſatisfaction of his neighbours; and of Mr. Thomas Walker, of Montreal, while he was in the commiſſion of the peace for that diſtrict;

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

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

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

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

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

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Roman-Catholicks were permitted to ſit in the aſſembly.

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

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

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

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

And, as the Engliſh inhabitants were of opinion, that the eſtabliſhment of a proteſtant aſſembly was a ſafe or practicable meaſure, that would not diſguſt the body of the Canadian freeholders in the province, (provided they were permitted to elect members into the aſſembly, though not to be elected into it,) they made not the leaſt difficulty of thinking, that it would alſo be a wiſe or politick meaſure, becauſe they were convinced that it would gradually operate as an inducement to ſuch of the Roman-Catholick inhabitants of the province, as were not very ſtrongly attached to the church of Rome, to abandon its erroneous doctrines, and embrace the proteſtant religion; and that, with reſpect even to thoſe of them who were moſt zealous in the belief of the Romiſh religion, it might prove a means of engaging them to examine the foundations of it with freedom, which could hardly fail of producing

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in them a conviction of its errors, and, in the end, an abjuration of them: and thus they were of opinion, that the Proteſtant religion would, in conſequence of ſuch an eſtabliſhment, gain ground in the province amongſt his Majeſty's new Canadian ſubjects, which they conſidered as a moſt deſireable event, and one that would greatly contribute to ſtrengthen the attachment of thoſe new ſubjects to his Majeſty's government.

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

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

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

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

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

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

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

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

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

Monſieur,

VOUS n'avez pas pû réuſſir quant à vôtre pétition : aucuns Canadiens ne veulent la ſigner. Le glaive eſt cependant ſuſpendu

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

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

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

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

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

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

François Joſeph Cugnet.

Ce 1er Septembre,
1773.

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

SIR,

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

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

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

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

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

My Canadian friends alſo deſire, that this joint Petition of the new and old ſubjects of

his Majeſty may be preſented only in the French language. This requeſt they conceive to be reaſonable, and no-ways inconvenient to the Engliſh gentlemen, who intend to ſign this petition, becauſe all the Engliſh inhabitants of the province underſtand French.

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

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

I remain, SIR,

with great regard,

your moſt humble and

moſt obedient ſervant,

Francis Joſeph Cugnet.

This 1ſt of September,
1773.

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

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

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

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

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

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

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

L'augmentation d'un ſi vaſte païs, dont le nombre des habitants excéde actuellement celui de cent mille, dont quatre-vingts, dix-huit, ſont nouveaux ſujets ; --- l'avancement de

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ſon agriculture ; --- l'encouragement de ſa navigation et de ſon commerce; ---- un arrangement à faire ſur des fondemens ſolides et inébranlables, qui puiſſe déraciner la confuſion qui y regne, à ſon détriment, faute de loix fixes ; ---- ſont des points préſentement en conſidération, qui ſont dignes de la ſageſſe de la légiſlature Britannique, et qui méritent certainement l'attention particuliére de la mére-patrie et toutes les graces qu'elle peut lui accorder.

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

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

Vos expoſans prévoyent qu'on pourra leur objecter ;

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

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

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

qu'elle feroit par la ſuite la conquête d'un païs immenſe, peuplé de gens nés dans le ſein de l'Egliſe Gallicane : ---- Que ce païs conquis, qui contient cent mille ames et plus, dont ſeulement deux mille ſont de l'Egliſe Anglicane, ne peut être ſujet aux anciennes conſtitutions : ---- Que la conduite irréprochable qu'ont tenue les nouveaux ſujets depuis la conquête, et leur ſoumiſſion au Gouvernement Britannique, doivent être des ſûrs garants à la mére-patrie qu'ils n'abuſeront pas de la dérogation qu'elle voudra bien faire en leur faveur à ſes anciennes conſtitutions : ----- Que vôtre très-excellente Majeſté, en les aſſurant par la proclamation royale qu'ils jouïroient, ainſi que ſes anciens ſujets Britanniques, du bénéfice des loix Angloiſes, leur a ſolemnellement promis qu'ils en auroient tous les avantages ; et que, comme ſujets Britanniques, il leur ſeroit permis de ſe faire repréſenter dans une chambre d'aſſemblée par des Canadiens de leur propre choix : ---- Que la mére-patrie ne peut raiſonnablement leur refuſer cette grace, puiſqu'elle leur a déja accordé, contre ſes conſtitutions, à être Jurés, non ſeulement dans toutes les affaires civiles, mais même dans toute affaire criminelle.

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

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

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

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

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

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

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

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

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

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

THE Petition of divers of his moſt excellent Majeſty's moſt faithful and obedient Subjects, both new Subjects and old ones, conſiſting of Lords of manors, Proprietors of freehold lands of inheritance, Citizens, Merchants, and Traders, in the province of Quebeck in North-America, both for themſelves and in behalf of all the other inhabitants of the province;

Humbly ſheweth,

That your Petitioners, having been informed that it appeared by the declarations made in the courſe of ſome late debates in parliament, that the affairs of this province were to be taken into conſideration in the enſuing ſeſſion of parliament, do now take the liberty of repreſenting to your moſt excellent Majeſty and this auguſt aſſembly, that, in conſequence of the encouragement given them by the general capitulation of Canada, and by the definitive treaty of peace, and ſtill more by the Royal Proclamation, publiſhed by your moſt excellent Majeſty on the 7th day of October,

ber, 1763, the former part of your Majeſty's ſubjects, the French inhabitants of this province, have remained in the province and ſettled themſelves in it, and divers of the latter, your Majeſty's ancient Engliſh ſubjects, have come into the ſame and bought lands therein, and others of them are daily coming into it, in the hope which they have all entertained of enjoying the privileges and advantages of Britiſh ſubjects, agreeably to the promiſe made to them in the ſaid proclamation.

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

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

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

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

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

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

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

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

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

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

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

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

As

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

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

conſtitution that the Canadians ſhould be permitted to be choſen into it in greater numbers than the Engliſh, and form the principal part of it, your petitioners (who can by no means conſent to be governed by an aſſembly conſiſting only of Engliſh members) do in that caſe humbly intreat your moſt excellent Majeſty, and this honourable aſſembly, to preſerve to them their ancient laws concerning their property, agreeably to the 37th article of the general Capitulation, and the 4th article of the definitive treaty of Peace. It is for the intereſt of the Crown that theſe laws ſhould be preſerved to them, becauſe by the continuance of theſe laws your Majeſty's ſaid new ſubjects will remain under the ſame obligation of paying to your moſt excellent Majeſty the dues and feudal profits ariſing out of their lands, to which they have always hitherto been ſubject; ſuch as the fifth part of the purchaſe-money upon every ſale of a fief, or tract of land holden of the Crown by fealty and homage, and the *Droit de Laods et Ventes*, or the twelfth part of the purchaſe-money upon every ſale of a piece of land holden by rent-ſervice; which profits (by reaſon of the very frequent alienations of land in this province) are ſuppoſed to amount to between three and four thouſand pounds ſterling a year; which would be a conſiderable aid towards defraying the expence of the government of the province. ----- If

their

their laws, concerning property, are thus preſerved to them, they conſent, that your moſt excellent Majeſty, and this honourable Aſſembly, ſhould delegate to the Governour and Council of the province (the ſaid Council being compoſed of Canadian as well as Engliſh members) the power of making ordinances for the maintenance of good order in the province, (agreeably to the delegation of a like limited legiſlative authority to the Superiour Council in the time of the French government,) and of regulating the forms of proceeding in Courts of Juſtice; but with an expreſs proviſion, that they ſhall not have any authority to alter the laws of property, even in the minuteſt particulars.

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

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

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

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

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

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

To Monſieur Cugnet.

SIR,

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

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

SIR, Your, &c.

Quebeck,
September 4, 1773.

Malcolm Fraſer.

To Monſieur Cugnet.

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

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

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

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

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

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

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

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

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

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

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

SIR,

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

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

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

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

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

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

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

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

though

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

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

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

ſcribing rules to the King; and thereupon the French Gentlemen broke off from the Engliſh, who were thereby obliged to petition the king in their own names only. They nevertheleſs took care in their petition to aſk only for an aſſembly in general, without deſiring the excluſion or admiſſion of the followers of any particular ſect of religion. It is true, there has been a petition publiſhed in England, as having been tranſmitted by the Engliſh, in which it is ſtated, that there are proteſtant ſubjects enough in the province to compoſe a houſe of aſſembly. But this petition (if it is not altogether ſpurious) muſt have been tranſmitted ſeveral years ago, when it would have been thought an inſult to propoſe to his Majeſty to admit any other than proteſtants. —— The generality of the Engliſh now in Canada, who can be ſuppoſed to interfere in ſuch matters, are ſo far from demanding the excluſion of the Canadians that they laſt year declared, and it is believed, moſt of them are ſtill of opinion, that it would be far preferable for the inhabitants of this province to be governed under the Britiſh mode of a Governour, Council, and General Aſſembly, even if they were all Roman-Catholicks, than by the moſt unexceptionable Governour and Legiſlative Council that can be imagined, though they ſhould all be Proteſtants, unleſs they could be rendered immortal: and, rather than to truſt

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to a council eligible by the governour, or even by the King himſelf, they think it would be much ſafer to have the whole power of government lodged in a ſingle perſon, who would alone bear the blame of any miſconduct. Be aſſured, therefore, that the Engliſh deſire no excluſive privilege, and that they look on all kinds of religious perſecution with abhorrence, and only wiſh to be dealt with as they would deal with others. It is, therefore, needleſs to revive the memory of the ſanguinary tranſactions of paſt ages on the ſcore of religion, which may be more juſtly attributed to the depravity of human nature, than to the fundamental principles of any ſect of the Chriſtian religion.

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

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

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

Any Lover of Truth
and good Manners.

Indian Lorette,
February 8, 1775.

A Defence

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

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

SIR,

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

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

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

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

Dated Montreal, Jan. 10, 1774.

Theſe words were intended to obviate any objection that might be made to the eſtabliſhment of a houſe of aſſembly in the province of Quebeck, from the ſeeming hardſhip of excluding

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

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

Upon theſe grounds they have conceived the ſupremacy of the crown to be a matter of ſuch fundamental importance in the Britiſh government, that the oath enjoined for its ſecurity ought never to be diſpenſed with in any of the dominions of the crown, with reſpect to perſons who were to be inveſted with publick authority; yet they had expected that the Roman-Catholick inhabitants of the province would have been permitted to vote at the elections of members of the aſſembly, though not to be elected into it themſelves; and this they knew would give them a great influence in the aſſembly, by means of the members they ſhould ſo elect. For as the proteſtants in the province are no leſs than three thouſand, and many, or moſt of them, are active, clever people, much more capable of doing the duty of aſſembly-men than the French or Roman-Catholick inhabitants of the province, it would be eaſy for the electors, out of ſo great a number of qualified perſons, to chooſe ſuch members as would be agreeable to them and attentive to their wiſhes and intereſts. But when the Britiſh and proteſtant inhabitants of the province came to hear that this great

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fundamental principle of government, the acknowledgement of the ſupremacy of the Crown, had been diſpenſed with in the iſland of Granada, and Roman-Catholicks had been admitted into the aſſembly there, and were given to underſtand that, if an aſſembly ſhould be called in the province of Quebeck, the Roman-Catholicks would there alſo be treated with the like indulgence; they reſolved to acquieſce in a meaſure which they could not have adviſed; and as they had no perſonal averſion to their Roman-Catholick fellow-ſubjects, nor any deſire of excluding them from the aſſembly but upon thoſe general grounds of policy, which had formerly been adhered to by the Britiſh government, but which it had been thought expedient of late to depart from, they reſolved, with the modeſty becoming loyal and obedient ſubjects, to declare before-hand their readineſs to acquieſce in the new ſyſtem, and to accept, without complaining, of ſuch an aſſembly as his Majeſty in his royal wiſdom ſhould think fit to eſtabliſh in the province. They accordingly drew up a petition to his Majeſty in January 1774, to grant them an aſſembly, in which, after ſetting forth the grounds upon which, they thought, they had reaſon to expect one, they concluded with the paragraph above recited, which expreſſed their diſpoſition to acquieſce in, and accept with chearfulneſs an aſſembly of ſuch form and conſti-

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

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

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

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

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

As to the diſpoſition to oppreſs and perſecute the Canadians, which this writer imputes to the Britiſh inhabitants of the province, I will venture to ſay that there is not the leaſt ground for ſuch a charge. They have always wiſhed to live in the utmoſt harmony with his Majeſty's new ſubjects in the province, and to ſee them partake with themſelves in the Liberty and Security, which the Laws of England, till the late Act, afforded them all in common; and they would have been happy to ſee them gradually abandon the tenets of the Romiſh Religion, and that adherence to a foreign juriſdiction, which had been till lately ſuppoſed to be a juſt ground for excluding the perſons who hold them from power (though not from liberty and ſecurity) in Canada as well as England, and thereby become capable of partaking with themſelves

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in the exerciſe of the government of the country. And we have now ſeen, by the paragraph above recited from their petition, that, when they were informed of the change in the general policy of the Britiſh government, with reſpect to the excluſion of Roman-Catholicks from places of truſt and power, they ſubmitted their own ſentiments to thoſe of their ſuperiours, and declared their willingneſs to acquieſce in the eſtabliſhment of a General Aſſembly, into which the Roman-Catholicks ſhould be admitted.

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

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

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

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

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

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

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

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

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

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

Mr.

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

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

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

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

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

further promiſe, never to come again amongſt them on the like errand.

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

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

There are in Montreal many Engliſh Gentlemen of experience in military affairs, who offered their ſervices to Governour Carleton, and would have been glad of being employed to head the Canadians. *But their offers were not accepted*; while Mr. de Rigouville, a French Gentleman, whoſe talents either for the Cabinet or the Field are not in the higheſt reputation, was inveſted with a command. The conſequence was, that his party all ran away, and he himſelf was ſurpriſed in his bed, and taken priſoner. Major Cox, an Engliſh Officer of eminence, and Lieutenant Governor of Gaſpé, offered to go to St. John's, with 25 men, which he had raiſed at Beaufort: but he was told, (as Monſieur le Brun had been on his making a ſimilar

milar offer of his ſervices) *de reſter tranquil chez lui*; to ſtay quietly at home and not meddle in the buſineſs. The Engliſh inhabitants of the province, though they felt for their treatment from Adminiſtration, and from General Carleton, yet did not think, that treatment could juſtify their countenancing, in any degree, thoſe who were in arms againſt their Sovereign. Accordingly they have been very active in the defence of the province; and thoſe few Canadians, who have taken part with Government, have been influenced entirely by their perſuaſion and example.

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

nor

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

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

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

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

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

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

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

Quebeck, Oct. 25, 1775.

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

early as in March laſt to plan his ruin. When the congreſs ſent their firſt addreſs to the Canadians, a Mr. Cuſhions, (an old and particular acquaintance of Mr. Walker's, when he reſided at Boſton) ſent him a packet of them, printed in French, to diſtribute. Mr. Walker made no ſecret of his having received this packet, as we had long before received that addreſs in the News-papers, and tranſlated copies of it had been handed about the country by the French themſelves. However, Rouville and Cugnet took occaſion from it to tell the Governour in publick at his table, that Mr. Walker correſponded with the congreſs: And when that ſhameful inſult, of which I have formerly ſent you an account, was offered to his Majeſty's marble Buſt at Montreal, on the day on which the Quebeck act took place, mention was again made of Mr. Walker by his enemies, as having a concern in that odious buſineſs. But fortunately (if I can with propriety ſay ſo) for him in that matter, he was at that time, and had been for ſome days before, very ill with the rheumatiſm, under the care of Dr. Beaumont. One day Rouville got into a diſpute with him and others, in the market in Montreal. What the diſpute began upon, it is not material to enquire; but Rouville would ſupport this poſition, *Que le roi eſt maitre*, that is, that the King is maſter, or that his will muſt always be complied with. Mr. Walker ſaid very

very coolly, " That, with regard to Monſieur de Rouville, it might be ſo, as he eat of his Majeſty's bread; but, ſaid he, I deny that the King is my maſter. I reſpect him as my lawful Sovereign and King, and am ready to pay due obedience to his lawful commands; but I cannot acknowledge him for my maſter while I live by my own induſtry. When I receive pay from him, I will acknowledge him for my Maſter." Rouville immediately wrote to the Governour an account of this converſation, and added, that he had made no reply to Mr. Walker: and in a few days he received an anſwer from the Governour, which he ſhewed to ſeveral perſons at Montreal, in which the Governour commends his prudence, and promiſes not to forget him. And accordingly he was ſoon after named for one of the Judges of Montreal, to the great ſurprize and aſtoniſhment of all the French inhabitants, who had conceived an ill opinion and a ſtrong diſlike of him from his behaviour in the office of a Judge, of ſome kind or other, many years ago in the time of the French government. This Mr. Rouville is remarkable for taking every opportunity (as he ſpeaks a little Engliſh) to throw himſelf in the way of the Engliſh inhabitants of Montreal, in order to pick up what tales he can, to ſend them to the Governour: And this has been ſo well known to be his practice that many perſons have amuſed themſelves

ſelves by leading him into miſtakes, by opening their letters in his preſence at the Poſt-Office, (where he was always ſure to be,) and, mentioning things as if they read them in the letters, of which not a word was ſaid in them, and which were totally without foundation. And it was while Mr. Rouville was thus upon the hunt for private anecdotes amongſt the Engliſh inhabitants of Montreal, that Mr. Walker fell into the above diſpute with him. This diſpute, together with many invectives from ſome of the military gentlemen, who were particularly ſevere, and gave themſelves many airs, ſtyling the members of our committee, that prepared the petitions to Parliament, rebels, and conſtruing our diſlike of the Quebeck Bill into a ſpirit of oppoſition to government, and declaring, that they hoped every moment to receive orders to take us up; I ſay, the converſations of this kind, which were frequently heard, (though chiefly indeed among the young and inconſiderate,) yet had ſo ugly an appearance, and ſo bad a tendency, that they determined Mr. Walker, in the month of May, to go to his country-houſe at Aſſumption to the pot-aſh works which he had erected there, and amuſe himſelf with thoſe, and with his farm, merely for the ſake of being out of the way of ſuch converſations, and out of the reach of the calumny of his enemies. But all would not do; for it would be impoſſible

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in the ſpace of a letter to relate the many artful reports that have been ſpread to ſet his fellow-citizens againſt him, that he might with the greater eaſe be made a ſacrifice to their reſentment. One time it was reported, that packets of letters to him and others had been intercepted, which were anſwers to letters wrote by him; at another, that letters from him had been taken; then that two Canadians were taken up and in priſon, who had brought letters for him from the Southward; then that he had been over the river with the provincials. Once it was aſſerted here, that he and two other perſons were taken up and impriſoned, and that three more perſons at Quebeck were ſoon to be ſo; then it was ſaid, that he had quitted the province, and afterwards that he was fortifying himſelf. Mr. John Bondfield, having buſineſs up the country, called on him at Aſſumption, and mentioned theſe reports, and that we had publickly contradicted them at Quebeck. It was the firſt time he had heard of them; for he had not been eaſier or quieter for a long while, as he ſaw nobody but his own people, and amuſed himſelf on his farm, and with reading. But as things grew worſe and worſe, and our military preparations went on with vigour, (ſo that thoſe, who did not carry fire and ſword in words and actions, were ſuſpected of favouring the provincials,) nothing was talked of but parties of men to take up peo-

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

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

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

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

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

Quebeck, Oct. 25, 1775.

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

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

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

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

I Wrote to you the 25th day of laſt month. About ten days before that time, thirty Yankies, with a party of Canadians, (as we have ſince learnt, though it was concealed from us here at the time) brought two pieces of cannon from the camp before St. John's, and planted them before Fort Chambly, and very

very ſoon made a breach in that ſingle rotten wall; by which the garriſon, which conſiſted of eighty men with ſix or ſeven officers, were obliged to ſurrender. They obtained leave to carry all their baggage with them; but left about eighty barrels of powder, a quantity of ſhot, ſome flour and pork, and their arms, and the colours of the 7th regiment, in the fort.

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

Since the ſurrender of this fort the provincials have formed a camp at Sorel, and have ſent a ſtrong party with cannon and mortars againſt Montreal, which muſt be in their poſſeſſion very ſoon, becauſe it is not tenable. Governour Carleton and general Preſcot were both there till Monday. As they have ſhut up the communication between Montreal and this

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

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

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

Québec, Octobre 24, 1775.

Monſieur,

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

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

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

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

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

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

SIR,

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

The ill effects of this new eſtabliſhment have been felt almoſt as ſoon as it took place. For at that very inſtant the frontiers of the province were invaded by the king's enemies, and the Governour endeavoured to excite the inhabitants of it to take arms in its defence. But they were far from complying with his exhor-

exhortations. For many of the pariſhes joined the rebels: and throughout the reſt of the country the inhabitants have, in general, refuſed to take arms for the government, *and to defend*, as they expreſs it, *a pack of raſcally penſioners of the crown, and their damn'd French laws*. For thoſe, Sir, are the very words that they make uſe of. Add to this, that no perſons have been employed to endeavour to raiſe them on this occaſion but ſuch as they hold in utter deteſtation.

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

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

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

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

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

Extract

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

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

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

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

ſtop to every thing, and has prevented any part of the Act from taking place.

The Canadian inhabitants of this province openly avow their affection to the Engliſh manners and cuſtoms, and declare that they never wiſh to live quieter or more happy than they have done ſince the commencement of the civil government. Indeed it is ſurpriſing to ſee how much they have flouriſhed and increaſed in riches within theſe few years, by meeting with ſo good a market for their produce. This is owing to the great ſpirit of ſpeculation-trade that prevails amongſt the Engliſh Merchants here and their Friends at Home, and cannot in any degree be attributed to the French Merchants, who have nothing of the ſpirit of trade in them. This flouriſhing ſtate of the province, ſince the eſtabliſhment of the Engliſh laws in it, makes the Canadians fond of thoſe laws, and deſirous of their continuance: And numberleſs are the proofs that might be given of their preferring them to the French laws by which they were formerly governed, were it not for the artifices of a very few perſons, the Nobleſſe of the province, who, by having gained the ſupport and aſſiſtance of Government, have had it in their power to diſguiſe the truth, and prevent an union between the old and new ſubjects in making applications to the Throne to obtain a ſettlement of

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the province upon the foundation of the Engliſh law. When any ſtrangers from England have come to theſe parts by way of curioſity, who on their return might have repreſented things in a true light, they have been kept up amongſt a ſmall circle of people, and have hardly ever appeared in publick, or converſed with the people at large, and have thereby been prevented from getting true and general information concerning the real ſtate of the province and the ſentiments of its inhabitants.

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

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

The Governour's reaſon for eſtabliſhing Martial Law in this province was, that he might be

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

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

General

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

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

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

country,

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

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

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

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

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

I.

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

II.

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

III.

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

IV.

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

V.

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

VI.

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

VII.

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

VIII.

Les indulgences pléniéres
Nous conduiront ſûrement
A l'éternelle lumiére
Si nous ſommes obéiſſans.

IX.

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

X.

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

Tranſlation of the foregoing French Song.

I.

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

II.

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

III.

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

IV.

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

V.

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

VI.

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

VII.

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

VIII.

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

IX.

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

X.

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

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

N. B. On dit que plus de 30 chanſons pareilles et 50 placards, où la cupidité, l'extravagance, et l'ambition du prélat ſont développées, et qui annoncent parfaitement à quel point de mépris il s'eſt réduit par une conduite

duite auſſi extraordinaire pour ſon état, lui ont tout à fait tourné la tête. Il envoye, en haut et en bas du païs, excommunications ſur excommunications. Ce n'eſt plus au roi qu'on deſobéit ; c'eſt à l'égliſe, dont il eſt le chef. Sa folie, (qui ne fait qu'irriter les peuples,) dure depuis le 20 de May. Cependant depuis le 3 de ce mois (Novembre) il ſe tait ; — menace même le païs de s'en aller en France. Plût à Dieu qu'il exécutât ſa menace ! mais ce n'eſt que la peur qu'il a des Boſtonnois qui la lui fait faire.

Tranſlation of the foregoing Remark.

N. B. I am informed, that more than thirty ſongs of the ſame nature with the foregoing, have been made in the province of Quebeck upon the biſhop, beſides fifty papers that have been poſted up in publick places, in which his avarice, his love of power, and extravagant behaviour, are freely cenſured, and which plainly ſhew to what a low pitch of contempt he has ſunk himſelf, by a conduct ſo unſuitable to his epiſcopal character : and it is ſaid, that theſe mortifications have almoſt turned his head. He has been continually iſſuing forth excommunication after excommunication throughout every part of the province, and talks of nothing but diſobedience, not to the King, but to the church ; of which he (the biſhop) is the head. This wild conduct (which has

has no effect but that of diſguſting the people of the province) has continued ever ſince the 20th of laſt May. However, ſince the 3d of this month of November, he has been quiet;— and even threatens to leave the province and go to France. Would to God, that he would put this threat in execution! But it is only the fear of the Americans, who have invaded the country, that has been the cauſe of his making it.

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

much diſapproves ſuch violent and exorbitant abuſes of ſpiritual power.

Anecdotes ſur la conduite de Monſieur Briand, Evéque de Québec.

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

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

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

Une autre, beaucoup plus forte, arriva quatre mois après. Un homme de la paroiſſe de St. Jean, dont Mr. Gaſpé eſt ſeigneur, voulut ſe marier avec une de ſes parentes aſſez éloignée, et demande la diſpenſe à l'Evêque. Comme Mr. Briand aime un peu l'argent, il exige de ce pauvre malheureux une ſomme qui excédoit la valeur de ſa terre. Cet homme au déſeſpoir s'adreſſe d'abord à un Miniſtre Anglois pour le marier, qui le refuſe, et lui donna les raiſons de ſon refus. Mon homme prend ſon parti, aſſemble ſes parens et ſes amis, leur donne un feſtin, et avant de ſe mettre à table, fait paroitre ſa partie, et en préſence du père de la fille et des convives, l'un et l'autre ſe donne mutuellement le conſentement pour le mariage. L'homme, il eſt vrai, étoit puniſſable, mais Mr. Briand ne s'en tiens pas là ; il excom-

munie non ſeulement les mariés et les convives, mais toute la paroiſſe ſans exception : en ſorte que Mr. et Mad. Gaſpé à une lieue et demie de la nopce, ſe trouvent enveloppés dans l'excommunication. Le Curé de l'Iſlette, qui deſſert cette paroiſſe, de la part de l'Evêque ſe porte ſur le lieu ; éteint la lampe du maître autel, renverſe les cierges par terre, fait donner les coups de cloche, conſomme les hoſties, retire ciboire, calice, et ſoleil, lit la ſentence d'excommunication, et déclare qu'elle durera tant que la paroiſſe gardera dans ſon ſein ces deux rebels à l'Egliſe. Cette pauvre paroiſſe, toute déſolée, députe les marguillers : ils ſe tranſportent à Québec, et à deux genoux viennent ſupplier l'Evèque. Il étoit alors illuminé d'une couple de bouteilles de bon Madeire (ce qui lui arrive quelque fois, et dans ces momens il ne fait pas bon de l'approcher :) il les traita comme les derniers des malheureux. *Non*, dit-il, *je ne vous releverai jamais de cette excommunication. Je vous apprendrai à craindre un Evêque ; et le païs, par vôtre exemple, deviendra plus ſoumis à l'Egliſe. Je vous ordonne de chaſſer ces malheureux de chez vous ; et ſi vous obéiſſez, je verrai ce que j'aurai à faire.* Ces pauvres gens fondant en larmes à ſes genoux ; " ils " ſont ſur leur terres, répondirent-ils, ce n'eſt " point à nous à les chaſſer, mais aux juges." *Retirez-vous, canaille*, leur dit-il, en ouvrant ſa porte. Ils ſe relevérent, mais un de la bande devenant plus hardi, au lieu de ſortir comme

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ſes confréres, lui dit d'un ton ferme, en préſence de Mr. Mabane, juge des plaidoyers communs, qui ſe trouva par hazard à cette ſcene ; " Monſeigneur, ſi cet homme eut donné cent " cinquante piaſtres que vous exigiez pour ter- " miner le mariage de m^elle une telle, il auroit " eu ſa diſpenſe, et n'auroit pas tombé dans " cette faute ; mais, Monſeigneur, vous de- " viez le punir comme coupable, et non pas " toute une paroiſſe qui eſt innocente." Mr. Mabane rit à ce début, et pria inſtamment l'Evêque de relever cette excommunication, qui reſta néantmoins, et ne fut relevée que plus de deux mois après aux inſtantes ſuppliques de Monſ. et de Mad. Gaſpé. ---- Le nommé François le Clerc, qui étoit un de ces marguillers, et de qui je tiens cette hiſtoire, dit que l'Evêque, loin de rire comme faiſoit Mr. Mabane, jettoit feu et flamme.

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

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

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

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

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

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

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

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

Another and a much ſtronger inſtance of this biſhop's violence of temper happened about four months after the former. A man that lived in the pariſh of St. John, of which Monſieur Gaſpé is the Seignior, wanted to marry a woman

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

in

" in the minds of the Canadians, and a deſire " of returning to that government. Is it not " much better to breed up the young Cana- " dians to the Romiſh church in the ſemina- " ries, or colleges, which are already eſtabliſh- " ed in the province, and then to have them " ordained in the province itſelf, by one of his " Majeſty's own ſubjects, who will be con- " ſtantly reſident in the province? and, for " this purpoſe to permit a Roman-Catholick " biſhop to reſide in the province, by whom " thoſe young Canadians may be ſo ordained?" This was the argument, as I have reaſon to believe, by which his Majeſty's Miniſters, in 1766, were prevailed upon to connive at Monſieur Briand's returning into the province of Quebeck in the character of biſhop: I ſay, *connive* at his doing ſo; becauſe, as they did not procure for him any licence or permiſſion in writing to authorize him to do ſo, it can hardly be called by any other name. And it muſt here be obſerved, that even the Quebeck act itſelf (which reſtores to the Romiſh prieſts their legal right to their tythes, and other antient dues from their Roman-Catholick pariſhioners) does no more than connive at the biſhop's exerciſing the epiſcopal authority in Canada, there being no clauſe in it that impowers him to do ſo, or that makes mention of his reſidence in the province.

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The above-mentioned argument is certainly ſpecious: but I do not think it concluſive. For it would have been eaſy to have obtained the advantages, which are the ground of it, that is, the excluſion of freſh prieſts coming into the province from old France, without permitting a Popiſh biſhop to reſide in it, by purſuing the following plan. The ſeminary, or college, at Quebeck might have been preſerved, with all its members and teachers of Popiſh divinity and its revenues, (which are ſaid to amount to ſix or ſeven hundred pounds ſterling a year,) for the education of young Canadians to the profeſſion of the prieſthood: and when they had attained the proper age for taking orders in that church, theſe young men might have been ſent over to England at the King's expence with the Governour's recommendation to his Majeſty's Secretary of State for America, as young men of good behaviour and principles, that were fit to be made prieſts and hold benefices in the province. And from England they might have been ſent to Munſter in Germany, or to the Popiſh canton of Lucerne in Switzerland, (attended by ſome proper and truſty companion, who ſhould have taken care that they ſhould not have ſet their foot in old France) with recommendations, if they had gone to Switzerland, from the Secretary of State for America to his Majeſty's Reſident, or other Miniſter, to the Swiſs Cantons; and there they might have been ordained to the prieſthood of the

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church of Rome by the biſhop of Munſter, or Lucerne, or ſuch other Roman-Catholick diſtrict, (not in old France,) as his Majeſty, in his royal Wiſdom, ſhould have thought fit to ſend them to. And when thus ordained prieſts of the church of Rome by ſuch foreign Popiſh biſhop, they ſhould have returned to England, and from thence to Quebeck by the firſt convenient opportunities, at the king's expence. Such a voyage to Europe would probably have been conſidered, by the young candidates for the prieſthood who would have had occaſion to take it, as a party of pleaſure rather than a hardſhip. And the expence of it to the Publick would have been trifling; perhaps 300l. or 400l. once in three or four years. For, as the whole number of pariſhes in the province is but 128, (at leaſt it was no greater in the year 1767; I know not how many new pariſhes may have been created ſince:) a ſupply of two new prieſts a year, or ſix or ſeven every three years, would probably have been ſufficient to keep the benefices always full. By this obvious and eaſy method of procuring new prieſts for the ſupport of the Roman-Catholick religion agreeably to the toleration promiſed by the capitulation and treaty of Peace, the ſuppoſed neceſſity of permitting a Popiſh biſhop to reſide in the province might have been avoided. But, ſince a Popiſh biſhop is permitted to reſide there, I am extreamly glad he has a penſion from the crown, and that his

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

We have ſeen above in the *Account of the proceedings*, &c. page 112, the Petition of a ſmall number of the French inhabitants of the province of Quebeck to the King's Majeſty concerning the revival of the French laws and the admiſſion of Roman-Catholicks to places of truſt and profit, which was made the foundation of the late Quebeck act. And we have ſeen in the Petition of the Britiſh and other proteſtant inhabitants of the province to the houſe of Commons againſt the ſaid Quebeck act, that they declare, "*that the ſaid French petition had never been imparted to the inhabitants of the province in general, that is, to the freeholders, merchants, and traders of the province, who are equally alarmed with them (the ſaid Britiſh and other inhabitants,) at the Canadian laws being to take place, but was in a ſecret manner carried about and ſigned by a few of the Seigneurs, Chevaliers* [*de Saint Louis*] [*French*] *Advocates and others in their confidence, at the ſuggeſtion and under the influence of their prieſts.*" See the *Account of the Proceedings*, &c. page 257. It is therefore to the influence of the Romiſh

Romiſh prieſts of the province of Quebeck, who act under the authority and by the direction of their biſhop, that we are to aſcribe, in a great meaſure, the ſending over that French petition in the beginning of the year 1774, which was made the foundation of the Quebeck act. And I have hear'd by other accounts, that the ſaid biſhop's influence was very powerfully exerted to procure the ſignatures to that petition: ſo that the preſent revival of the French laws in all civil matters by the late Quebeck act is in a great degree owing to that biſhop. This is confirmed by the following paſſage, which is contained in a paper writ by a French Roman-Catholick of very good ſenſe in the province of Quebeck about the month of November, 1774, a few months after the arrival of the ſaid Quebeck act in the province, and during the firſt great and general conſternation into which the great body of the inhabitants of the province, both French and Engliſh, Roman-Catholicks and Proteſtants, with the few exceptions above-mentioned, were thrown by its contents.

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

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

Tranſlation of the foregoing French paſſage.

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

From

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

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

December 9, 1775.

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

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

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

prieſts.

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

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

I am your humble ſervant, &c.

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

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

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

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

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

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

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

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

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

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

Upon hearing this ſevere opinion, a young Engliſh merchant, of the name of Franks, who is ſettled at Montreal, and who at that time happened to be ſtanding near Monſieur de Belleſtre, replied to him in theſe words, “ On “ ne pend pas pour ſi peu de choſes en Angle- “ terre;” that is, “ In England men are not “ hanged for ſuch ſmall offences;” which words he repeated twice or three times. This provoked Monſieur de Belleſtre to ſuch a degree, that, after giving the young man much opprobrious language, he at laſt proceeded to blows, ſtruck him in the face, and pulled him by the noſe; upon which the other gave him a blow in the face, which knocked him down. The next day, May the 3d, upon a complaint of Monſieur de Belleſtre to the ſaid conſervators of the peace for the diſtrict of Montreal, not of the blow he had received from Franks (for to this he was conſcious he had given occaſion by ſtriking him firſt) but of the words pronounced by the latter, to wit, “ that in England people

“ were

" were not hanged for ſuch ſmall offences;" theſe conſervators iſſued the warrant here-under following for committing young Franks to priſon: and he was accordingly carried thither by a party of ſoldiers with bayonets fixed; and 10,000l. bail, that was offered to procure his liberty, and be ſecurity for his appearance to take his trial for this offence, was refuſed. And there he continued for a week; at the end of which time the ſame conſervators of the peace (by the direction, as it is ſuppoſed, of Governour Carleton) ordered him to be diſcharged without any bail at all. The warrant of commitment was as follows:

" Diſtrict de Montréal.

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

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

" peine ;" ce qu'il avoit différentes fois, publi-
" quement et à haute voix ré-itéré :

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

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

" Donné à Montréal ſous nos ſçeaux et
" ſeings le troiſiéme jour de May, 1775.

" Seigned,

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

" Aux bailiffs de Montréal."

The warrant to the jailor to receive and detain him, was as follows :

" You

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

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

" To Mr. Mackay, gaol-keeper."

The Engliſh of the above warrant of commitment is as follows:

" Diſtrict of Montreal.

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

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

" We,

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

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

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

Signed,

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

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

" Diſtrict

" Diſtrict of Montreal.

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

" To the keeper of the jail in Montreal.

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

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

" Signed,

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

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

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

A NAR-

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

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

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

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

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

I called

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

" to

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

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

" was

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

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

This

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

DAVID SALISBURY FRANKS.

From Montreal Jail, May 4, 1775.

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

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

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

A PROCLAMATION.

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

" from

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

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

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

GUY CARLETON.

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

GOD ſave the KING."

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

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

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

Reflections

Reflections on Martial Law.

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

Mr. Printer, Aug. 30, 1775.

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

of

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

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

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

"ders,

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

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

" And

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

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

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

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

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

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

" They

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

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

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

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

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

ſo

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

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

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

of

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

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

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

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

is

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

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

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

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

" And

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

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

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

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

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

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

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

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

deration

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

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

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

be

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

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

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

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

proof

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

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

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

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

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

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

in

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

I am, SIR,

Your very humble Servant,

A FRIEND *to the* PETITION *of* RIGHT.

Additions

Additions to the foregoing Reflections on Martial Law.

THE inquiſitive reader of the foregoing Reflections will probably be glad to know what the charter of the Maſſachuſett's Bay and the new commiſſion of Captain-General and Governour in chief of the province of Quebeck, granted to General Carleton ſince the paſſing of the Quebeck Act, declare concerning the eſtabliſhment of martial law. I ſhall therefore proceed to inſert the clauſes of king William's charter to the Maſſachuſett's Bay, and of the ſaid new commiſſion to the governour of Quebeck, which relate to that ſubject.

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

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

" vern

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

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

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

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

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

" to

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

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

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

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

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

Boundaries of the province.

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

In the new commiſſion the deſcription of the province is in theſe words: " Our pro-" vince of Quebeck in America, compre-" hending

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

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

Laws to be obſerved by the Governour.

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

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

"ſuch manner and form as is herein after "expreſſed."

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

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

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

Lieutenant-Governours of Montreal and Trois Rivieres.

Fourth difference. In the old commiſſion the Governour is directed to adminiſter the uſual ſtate-oaths to the Lieutenant-governours of Montreal and Trois Riviéres: in the new commiſſion no mention is made of theſe Lieutenant-governours.

Power of the Governour to call an aſſembly.

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

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

which confers the power of making laws. In the old commiſſion this clauſe is as follows. Power making laws.

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

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

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

" firmed

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

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

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

" to

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

 " or

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

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

" of

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Power of adjourning and proroguing the council.

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

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

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

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

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

duties

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

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

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

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

A Remark

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

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

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

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

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

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

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

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

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

GEORGE R.

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

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

And

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

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

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

By his Majeſty's command.

(Signed) H. S. CONWAY.

Guy Carleton, Eſq; Lt. Governour of Quebeck.

Entered as follows.

Entered at the Treaſury.

(Signed) THOs. TOMKYNS.

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

(Signed) S. BRADBURY.

A Re-

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

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

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

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

vent

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

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

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

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

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

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

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

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

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

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

IV. PRO-

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

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

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

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

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

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

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

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

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

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

In ſtating theſe reaſons, I ſhall ſuppoſe that General Carleton is able to raiſe a body of ſix thouſand Canadians, zealouſly diſpoſed from principles of religion, and (if you pleaſe) of new-born loyalty to their conqueror and ſovereign, to act againſt the other Americans; for this ſeems to have been the hope and view of thoſe who are inclined to try this meaſure, as well as of thoſe who adviſed and promoted the late Quebeck-act, which ſeems to have been intended to keep the Canadians in a diſpoſition to be ſo employed; yet I muſt obſerve at the ſame time, that the lateſt advices from Quebeck repreſent the Canadians as very averſe

averſe to this ſervice, and as having actually refuſed to engage in it as volunteers. What they will do if they ſhould be *ordered* or *preſſed* into the ſervice in the King's name by General Carleton (who has lately eſtabliſhed martial law in the province, ſeemingly with a view to be able to uſe this method of raiſing them, ſince the province at the time of his eſtabliſhing martial law was in a ſtate of perfect tranquillity, and the courts of juſtice at full liberty to ſit and adminiſter juſtice, according to the uſual forms of law, with perfect peace and ſafety) remains yet to be ſeen. But in general we know that perſons that are forced into a ſervice that is diſagreeable to them, are not apt to exert themſelves in it with zeal and ſpirit. However, let us for a moment ſuppoſe them raiſed and well-diſpoſed to act with vigour againſt the other Americans; the queſtion is, whether the employing them in this manner will do more good than harm? Now I apprehend that the King's ſervice in America, and the reduction of the rebel provincials, would be better promoted by keeping the Canadians at home within their own province in a ſtate of neutrality with reſpect to the preſent conteſt, but yet ready to defend their own province againſt the incurſions of the Americans, than by carrying this ſame formidable body of ſix thouſand Canadians (and the moſt ſanguine partizans of the meaſure do not preſume to think of a greater number) out of the limits

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of Canada to make war upon the other Americans,

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

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are the very *gates* of Canada; without which no troops can paſs either into or out of that province, otherwiſe than by ſea, with the tedious navigation of the river St. Lawrence, the mouth of which is no leſs than 360 miles diſtant from the town of Quebeck, and 540 from Montreal. How theſe moſt capital poſts came to be ſurprized by the provincials, let thoſe perſons explain whoſe duty it was to preſerve them. But now that the provincials have got poſſeſſion of them, it is probable they will keep it for a long time, as it will be a work of exceeding great difficulty to retake them. And while they do keep poſſeſſion of them, it is moſt certain they have it in their power, whenever they pleaſe, to pour in parties of three or four hundred men into the richeſt and moſt fertile part of the province, about Montreal, to burn the houſes, and deſtroy the corn and other ſtores of every kind. Nor let it be imagined that the Canadians can hinder them from doing ſo, ſo long as they are maſters of thoſe two poſts, even though we ſhould allow the Canadians to be braver men, better ſoldiers, better markſmen, better woodſmen, better buſh-fighters, better every thing than the Engliſh Americans, and able to beat double their own number of the latter whereever they meet them, as ſome people have been taught to believe them: for while theſe terrible ſix thouſand Canadians are employed in the Engliſh provinces in laying waſte the back-

back-ſettlements of Maſſachuſets Bay, Connecticut, and New-York, or are encamped with General Gage at Boſton, or where-ever elſe he ſhall take poſt, in order to enable him to make head againſt the grand provincial army, they will be evidently unable to defend their own province againſt the above-mentioned incurſions of the other Americans from Crown Point: and as to the Canadians, that will then be left in Canada, they will not be above 10,000 men more in the whole country able to bear arms, who will be diſperſed in ſeparate habitations along the banks of the river St. Lawrence, and two or three rivers that run into it, for the ſpace of 250 or 300 miles, taking care of their private affairs, and particularly of the cultivation of their lands. Now what reſiſtance can theſe people make to two or three different parties of Americans, of 200 men each, entering the province from Lake Champlain at the ſame time, and taking different routs through the country, one on each ſide of the river Richlieu, (which takes its riſe from Lake Champlain) and another along the ſouth-ſide of the river St. Lawrence, and perhaps a fourth venturing to croſs the St. Lawrence, and lay waſte the lands on the north ſide of it, and all bent only upon devaſtation, and retreating as ſoon as they perceive any body of people collected to reſiſt them? I believe every one muſt be ſenſible, that it will be impoſſible to prevent, or reſiſt,

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

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

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

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

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

Such will probably be the effects of this unconſtitutional and left-handed policy of arming a ſet of new popiſh ſubjects to reduce the other Americans to obedience. It would therefore, as I conceive, be a much wiſer conduct to preſerve the Canadians in a ſtate of neutrality and tranquillity, which I am informed the provincials are at preſent willing to allow them. Theſe thoughts, Mr. Printer, are not wholly derived from my own conſideration of this important ſubject, but have been partly ſuggeſted by other perſons who are well acquainted with the ſituation of that province, and the temper of its inhabitants; and they have appeared to me ſo juſt, that I have found myſelf obliged to aſſent to them: and for this reaſon I take the liberty of offering them to the conſideration of ſuch of your readers

readers as take a concern in the preſent moſt melancholy conteſt. I heartily wiſh that all the Americans were reduced to the obedience of parliament; and I wiſh ſtill more heartily that they would, of their own accord, return to it, and lay aſide their apprehenſions of the remote and poſſible, but, in my opinion, improbable oppreſſions, under which they may labour in ſome future time from any exertion of that authority: for hitherto (I mean, before the Boſton Port-bill and other ſubſequent acts of parliament, which are the effects, not the cauſes, of their reſiſtance to parliamentary authority) I do not ſee that they have had any juſt, or at leaſt any great, ſubject of complaint. But things that are right and neceſſary (as the ſupport of the authority of Great-Britain in America appears to me to be) ought to be done in *a right manner*, and *by right and proper inſtruments*. And the friends of the principles which eſtabliſhed the preſent royal family on the throne of theſe kingdoms, and excluded from it, by the act of ſettlement in the 12th year of king William, the only ſon of the preceding king (then a boy of 12 years of age) merely becauſe he was bred a Papiſt, and conſequently was thought likely to entertain in his future and riper years, maxims of government incompatible with the Engliſh conſtitution, will never be brought to think that an army of popiſh ſubjects of the crown, whether Canadians or Iriſh (for thoſe alſo

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

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

or

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

monks and nuns now in the province were to have been permitted to marry, if they had choſe it, without loſing their ſhares of the revenues of the convents they reſpectively belonged to. And other important regulations were recommended, which would have operated powerfully in favour of the proteſtant religion. With all theſe precautions taken in favour of proteſtantiſm, it muſt be confeſſed that there was a clauſe in this draught of an act of parliament, by which the Roman-Catholick religion would have been in ſome degree eſtabliſhed; as it directed that the Romiſh prieſts ſhould have a legal right to their tythes from their Roman-Catholick pariſhioners only, in the manner preſcribed by the late act. This perhaps was going too far in favour of the popiſh religion:---moſt certainly it was going farther than the Britiſh nation were obliged to go by the capitulation and treaty of peace, as has been ſhewn at large in the *Account of the Proceedings, &c. pages* 181,---199. But it was done for the ſake of the Proteſtant, not the Roman-Catholick, religion, and to keep the Canadians in the habit of paying tythes, to the end that, when they ſhould have embraced the Proteſtant religion, (which it was ſuppoſed would happen in the courſe of no very great number of years by means of the encouragements given to that religion by the other proviſions of the bill,) the proteſtant clergymen, who would

would then poſſeſs the benefices of the province, might not be deſtitute of a reaſonable maintenance. But in this draught the excluſion of all other perſons in the province who refuſed to take the oath of ſupremacy, (except the ſaid pariſh-prieſts,) from places of truſt and profit, preſcribed by the grand, fundamental, ſtatute of the 1ſt of Elizabeth (above-mentioned in the *Account of the Proceedings, &c. pages* 186, 187, *&c.*) was continued; ſo that no popiſh judges or other magiſtrates could have been appointed under it, and much leſs could a popiſh army (commiſſions in which are the moſt important and dangerous offices of truſt and power that can be held,) have been raiſed under it.

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

of parliament, or at leaſt its tendency, ſeems to be to render that religion perpetual. Yet in the Norwich Mercury of February 11, 1775, a letter to the printer of that paper was publiſhed, in which that imputation was inſinuated. The object of the writer of this letter ſeems to be to defend thoſe parts of the late Quebeck-act which relate to the Roman-Catholick religion: and in juſtification of the clauſe which gives to the Romiſh prieſts a legal right to claim their tythes, he does me the honour to cite the authority of my above-mentioned draught of an act of parliament on that ſubject. This letter was as follows.

To the Printer of the *Norwich Mercury*.

SIR, January 8, 1775.

I FIND from ſome papers, which I had not with me, when I ſent you what was inſerted in your laſt, upon ſome paſſages in the letter of "A conſiſtent Whig," that I was miſtaken in ſaying *that the parochial clergy of Canada were entitled to their tythes, &c. by the faith of treaty.*

In the 27th article of the capitulation of Montreal, September 1760, demand is made and granted "of the free exerciſe of the Roman-Catholick religion to ſubſiſt entire, &c." But the further demand, "that the people ſhall be obliged by the Engliſh government to pay the prieſts their tythes, &c." *is referred to the king's pleaſure.*

The

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

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

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

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

† Section the 11th of the above.

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

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

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

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

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

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

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

I am, SIR, &c.

In

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

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

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

An

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

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

To the Printer of the *Norwich Mercury*.

SIR, July 12, 1775.

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

is agreeable to that gentleman's ſuggeſtion. Now this is by no means true, he being known to have lamented the inſertion of that clauſe in the late act, which he conſidered as an eſtabliſhment of the popiſh religion in that province, (though of a leſs ample and compleat kind than if the prieſts had been authoriſed to demand the tythes of their proteſtant as well as popiſh pariſhioners,) to which the Britiſh government was not in any degree bound either by the capitulation in 1760 or the treaty of peace in 1763, and for which he did not ſee any ſufficient reaſon of expedience or policy. Yet it muſt be confeſſed, that in a certain draught of an act of parliament for ſettling the affairs of religion in that province, which had been drawn up by that gentleman in the ſummer of the year 1772, and of which copies had been ſent to ſeveral perſons of weight and conſequence, there was a clauſe for giving the Romiſh prieſts a legal right to their tythes from their popiſh pariſhioners, (agreeably to the proviſion of the late act,) as the above-mentioned letter-writer has aſſerted. But it would have been right in that letter-writer to have recollected that it is the duty of an impartial witneſs to relate *the whole truth* concerning every ſubject upon which he has occaſion to give his teſtimony, as well as to ſay nothing but the truth. And, if he had done ſo in the preſent inſtance, he would have told his readers that, though it is true that, in the draught alluded to, Mr. Maſeres had propoſed to give

the prieſts a legal right to the tythes of their popiſh pariſhioners, yet that in other parts of the ſame draught (which contained 55 printed pages in folio,) he had recommended ſo many proviſions of importance that would have tended to encourage the Canadians to abandon the errors of the Church of Rome and embrace the Proteſtant religion, that inſtead of perpetuating the Roman-Catholick religion (as the late act of parliament ſeems likely to do,) that draught would have contributed very powerfully to extinguiſh it; and this without any violence or perſecution, or the leaſt breach of that ample toleration of the worſhip of their religion to which the people of that country were intitled upon motives of humanity and policy as well as upon the ground of the capitulation and treaty of peace. But it by no means follows that, becauſe he recommended the giving the prieſts the tythes of their popiſh pariſhioners when accompanied with a variety of important proviſions for the encouragement of the Proteſtant religion, and the gradual extinction of that of the Church of Rome, he therefore approves of that clauſe when it ſtands ſingly by itſelf, without any of thoſe proviſions, and can tend only to ſupport and make perpetual the belief of the Roman-Catholick religion. Theſe are ſurely two very different things; and the writer of the above-mentioned letter ought, in juſtice to the aforeſaid gentleman, to have taken notice that they were ſo. Some of theſe proviſions in

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

In the firſt place it was propoſed that all the convents of monks and nuns in the province, and likewiſe the religious community of ſecular prieſts of the order of St. Sulpicius at Montreal, (who are owners, or upper lords, of the whole iſland of Montreal, beſides ſeveral other eſtates, to the amount, all together, of at leaſt 4000l. ſterling *per annum,)* ſhould be diſſolved;---- not by turning the preſent members of theſe ſocieties adrift, and immediately ſeizing their lands into the King's hands; but by making a partition of the lands belonging to each of theſe religious communities amongſt the ſeveral members of it, who now hold them in common, and veſting the reverſions of their ſeveral ſhares of them in the crown; ſo that for the future the ſaid lands would not have belonged to all the members of each ſociety in common, but every monk, and nun, and prieſt of the ſeminary of St. Sulpicius at Montreal, would have had a ſeparate lot, or parcel, of the lands that had belonged to his or her community, and would have held and enjoyed it during his or her natural life; and, upon the death of each of them, the parcel of land which he or ſhe would thus have held for life, would have accrued to the crown inſtead of accruing to the ſurviving members of the ſociety to which ſuch dead

dead perſon had formerly belonged. They were likewiſe to have been permitted to marry, if they had choſe it, and yet to retain during their lives the parcels of land that would have been ſo allotted to them, notwithſtanding they would thereby have departed from the rules of the religious ſociety to which they had formerly belonged. And, on the other hand, they were to have been permitted to continue in their reſpective convents and houſes during their lives in a ſtate of celibacy, and in the obſervance of the rules of their reſpective orders, if they had preferred that manner of life to the other. And it was further provided that the lands which ſhould then have accrued to the crown upon the deaths of the ſeveral members of theſe religious communities, ſhould be veſted unalienably in the crown, and the revenues of them applied to the ſupport of the civil government of the province, the whole burthen of which has hitherto been borne by Great-Britain.

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

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

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

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

Quebeck

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

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

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

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

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

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

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

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

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

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

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

popiſh

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

matters

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

have

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

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

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

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

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

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

But

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

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

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

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

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

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

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

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

I remain your humble Servant,

PHILALETHES.

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

ſtate,

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

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

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

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

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

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

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

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

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

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

the

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

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

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

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

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

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

A Remark

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

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

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

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

To this demand General Amherſt made anſwer in theſe words.

They become ſubjects of the King.

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

To this demand General Amherſt made anſwer in theſe words.

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

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

" His

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

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

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

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

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

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

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

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

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

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

In purſuance of this ſuppoſition that the laws of England had been introduced into the province by the aforeſaid proclamation and commiſſion, Governour Murray and his council, in the great ordinance dated on the 17th day of September, 1764, (paſſed at the commencement of the civil government of the province for the eſtabliſhment of courts of juſtice in it,) directed the chief juſtice of the province, (who was to hold the ſuperiour court, or *court of King's-bench*, eſtabliſhed by that ordinance,) *to determine all criminal and civil cauſes agreeable to the laws of England and the ordinances of the province*; and the judges of the inferiour court eſtabliſhed by the ſaid ordinance, (which was called the *court of Common Pleas,*) *to determine the matters before them agreeable to equity, having regard never-*

theleſs

theleſs to the laws of England, as far as the circumſtances and ſituation of things will permit, until ſuch time as proper ordinances for the information of the people can be eſtabliſhed by the Governour and council, agreeable to the laws of England; with this juſt and prudent proviſoe, "*that the French laws and cuſtoms ſhould be allowed and admitted in all cauſes in the ſaid court between the natives of the ſaid province, in which the cauſe of action aroſe before the 1ſt day of October*, 1764."

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

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

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

and

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

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

Some

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

a ſlighter proof of bad character, as a ground for ſuch rejection. Theſe are material differences between the laws of different nations, even concerning the validity of clear written inſtruments. But the law-ſuits that happen between people concerned in trade, do not uſually turn upon theſe inſtruments, but upon circumſtances of a more doubtful nature. Thus, for example, it is ſometimes neceſſary to prove the delivery of goods that have been delivered; --- at other times, to aſcertain their value, when no price has been agreed on between the parties, or when the goods fall ſhort of the quality agreed upon between them; --- at other times, to aſcertain the damage received by goods in their paſſage, and to determine to whom the blame of ſuch damage is to be aſcribed, and upon whom the loſs, ariſing from it, ſhall fall; --- at other times, to aſcertain the damages ariſing by not delivering a certain quantity of goods, of a certain kind and value, at the time appointed between the parties: and, a hundred other inſtances of the like kind might be mentioned, in all which it is neceſſary to determine ſome doubtful and delicate matter of fact. Now, in all theſe caſes, the Engliſh law ſays, a jury of twelve impartial men ſhall be impannelled to determine theſe doubtful facts; but the French law ſays, they ſhall be determined by the judges only, upon a due conſideration of the evidence. Surely, this

this is a material difference between the two laws, with reſpect to theſe commercial litigations! To illuſtrate this matter by an example, let us ſuppoſe, Mr. Thomas Walker of Montreal to be engaged in a law-ſuit of one of the kinds juſt now mentioned, with another inhabitant of Montreal. By the Engliſh law, (under which the cauſe of action aroſe) the matter of fact, and the meaſure of the damage ſuſtained by Mr. Walker, or his adverſary, will be determined by a jury. But, by the French law, concerning matters of property and civil rights, which has been revived by the Quebeck act, theſe things will be determined before Captain John Fraſer and Monſieur de Rouville, the judges of the diſtrict of Montreal, the former of whom has been long at enmity with Mr. Walker, and the latter of whom ſeems (by the account of his behaviour, with reſpect to him, ſtated in the extract of a letter herein before recited, pages 84, 85,) to have no great affection for him. Can it then be indifferent to Mr. Walker, whether he is to have the capital facts of his law-ſuit determined by a jury, or by Captain Fraſer and Monſieur de Rouville? and is it no injury to him to deprive him by an *ex poſt facto* law of the former method of trying it, and to force him to take up with the latter? Surely, it muſt be allowed to be a very great one. This clauſe, therefore, of the late Quebeck act, ſo far as it affects all

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

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

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

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

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

"But there is ſtill one important conſideration in favour of ſuch a plan as is adopted by the Quebeck-act with reſpect to the popiſh religion

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

'are

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

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

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

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

 are

are not ſubject, in thoſe colonies, to the incapacities, diſabilities, and penalties, to which Roman-Catholicks in this kingdom are ſubject by the laws thereof," is drawn up in a very inaccurate manner. For it does not ſtate the ſeveral capitulations of Quebeck, Florida, and Granada, (which are the colonies in queſtion,) ſo as to inform the learned lawyers, who were to anſwer it, what rights the inhabitants of thoſe countries were intitled to on that moſt important ground; nor does it ſtate the treaty of peace, or the king's proclamation of October 1763, nor his Majeſty's commiſſions of governour of thoſe ſeveral colonies to the firſt governours he ſent thither; all which are inſtruments of a high nature, and determine the laws and conſtitutions of the places to which they relate. The anſwers, therefore, that are given to a caſe ſo imperfectly, ſo wretchedly ſtated, cannot be intitled to much regard, let the learning and abilities of the gentlemen who give them, be ever ſo great: becauſe they are anſwers to a fictitious caſe, which differs from thoſe which really exiſt. The caſe which that query ſeems to have had in view is this: "*Whether, if Canada, Florida, and Granada, had been conquered without any articles of capitulation, and ceded by the treaty of peace without any ſtipulation in it concerning the toleration of the Roman-Catholick religion; and if his Majeſty had as yet made no proclamation concerning them, and had iſſued no commiſſion*

commiſſion to any civil governour of them, erecting and conſtituting a form of government and ſyſtem of laws for the ſaid governour's direction; whether, in this caſe, there would be any general maxim of the Engliſh law and government, by the operation of which the Roman-Catholick inhabitants of thoſe colonies would become ſubject to the incapacities, diſabilities, and penalties to which Roman-Catholicks in this kingdom are ſubject by the laws thereof." This, it is plain, is a quite different caſe from the real caſe of either Canada, Florida, or Granada, in the year 1765, when the afore-ſaid query was propoſed to, and anſwered by, the great lawyers above-mentioned.

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

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

With

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Before

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

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

ever

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

that

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

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

An Account of the Sentiments of the Canadians concerning the Introduction of the Engliſh Laws, and the Trial by Jury, into the Province.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Now it is evidently neceſſary to the right underſtanding the nature and merits of the ſuits that are conteſted in courts of juſtice, and conſequently to the juſt determination of them, that theſe pleadings, as they are called, ſhould be carried on in a clear and methodical manner; and this, whether the law, by which the cauſe is to be tried, be the Engliſh law, or the French law, or any other law whatſoever. But experience has ſhewn, that, to draw up theſe pleadings, or ſtates of the pretenſions of the contending parties, in a clear and proper manner, is a matter of conſiderable difficulty, and requires more than a common ſhare of preciſion in relating facts, and accuracy in reaſoning upon them: inſomuch that many perſons, who can ſpeak fluently and elegantly upon a ſubject, and thereby acquit themſelves plauſibly as advocates at the bar, are incapable of conducting this part of their clients buſineſs. This remark

mark I believe to be true in all countries, and according to all ſyſtems of law: becauſe nature has not endowed every man with a clear and logical underſtanding; which is a qualification eſſentially neceſſary to the management of this buſineſs. But it is more eſpecially true in the Engliſh law, where the art of drawing theſe pleadings is reduced to certain technical rules, and is diſtinguiſhed as a particular ſcience, or art, called *Special Pleading*, which forms a ſeparate branch of the ſtudy and practice of the law, and is known only to a very few lawyers. It is, indeed, to be lamented that it is not any where explained in a full and clear manner, ſo as to be eaſily attainable by all thoſe perſons who have by nature a capacity to underſtand it, and are willing to beſtow a moderate degree of application in acquiring the knowledge of it; becauſe of its great utility in the conduct of law-buſineſs. But the fact is as I have ſtated it: this ſcience is, in the Engliſh law, a myſtery known to but a few perſons. It is, therefore, almoſt certain, that the Engliſh lawyers, who are likely to go and ſettle in the province of Quebeck, if the Engliſh law were to be thoroughly eſtabliſhed there, would be ſome of thoſe who are unacquainted with this branch of law-learning; becauſe none of the more learned and accompliſhed Engliſh lawyers, that underſtand this uſeful part of the law, can ever be ſuppoſed to be willing to leave the lucrative practice which they

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

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

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

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

counſel thought fit to make a ſpecial plea to the plaintiff's declaration: and the record, or the whole collection of the pleadings, has, on theſe occaſions, been rather obſcure and difficult to underſtand; though in the common run of cauſes, where the general iſſue has been pleaded, the pleadings in this court have been, for the moſt part, tolerably clear and intelligible. But this court, (though it was the ſupream court of the province, and was held before Mr. Hey, the chief Juſtice of the province, a man of confeſſedly ſuperiour knowledge and abilities to any of the other judges in it, or to all of them put together,) tranſacted very little of the civil buſineſs of the province. This was not owing to any want of confidence in the chief Juſtice, or in the Engliſh lawyers who practiſed in that court, but chiefly to the cuſtom, which was obſerved in it, of drawing up all the pleadings, in the ſuits that were brought in it, in the Engliſh language, and of ſpeaking at the bar to the merits of them likewiſe in the ſame language, and partly to the greater expence which attended the proſecution of cauſes in this court, than in the courts of Common-pleas. The French clients were glad to be able to hear their cauſes ſpoke to in open court in their own language; and ſome of them were alſo deſirous of ſeeing and underſtanding the written pleadings in them, before they were delivered in to the court: and many of them were, for ſeveral years after the

the conqueſt of the province, deſirous of employing French lawyers in the management of them; though of late years ſeveral of the French inhabitants of Quebeck have thought fit very often to employ two Engliſh lawyers of good character, Mr. Kneller, (the preſent attorney-general of the province,) and Mr. Williams, in their cauſes in the court of Common-pleas there, even in preference to their own countrymen. And both Engliſh and French clients were glad to have their cauſes managed at as ſmall an expence as poſſible, and on that ground gave the courts of Common-pleas in the province a preference to the court of King's-bench. Add to this, that ever ſince the ordinance already mentioned to have been publiſhed in the month of February, or March, 1770, for further regulating the proceedings of the courts of Juſtice, the courts of Common-pleas for the two diſtricts of Quebeck and Montreal have ſat every week in the year, (with a few exceptions,) whereas the court of King's-bench has ſat only (as it did before that ordinance,) during three terms in the year at Quebeck, and during two terms in the year at Montreal. This greater frequency of the ſeſſions of the courts of Common-pleas in the province, and the expeditious attainment of the ends of the ſuits brought in them, which was the neceſſary conſequence of it, concurred with the other cauſes above-mentioned, in making thoſe courts become

the ordinary courts for civil buſineſs in the province, to the almoſt total neglect of the court of King's-bench of late years, with reſpect to that branch of its juriſdiction, except only upon appeals from deciſions in the courts of Common-pleas, which were ſtill permitted to be made to it, after the ſaid ordinance of February 1770, as well as before it. The courts of Common-pleas, therefore, have been the efficient courts in the province for the deciſion of civil ſuits in it, for many years paſt: and conſequently the manner of drawing the pleadings in theſe courts, and not that of drawing thoſe in the court of King's-bench in the province, (which is ſo little reſorted to) is what we ought to conſider as of moſt importance to the province, and moſt worthy of being brought to ſome tolerable degree of order and preciſion. Now, if it had been found by experience, that the pleadings in theſe courts of Common-pleas were tolerably clear and preciſe, ſo that the Judges who tried the cauſes, and alſo the chief Juſtice, or other Judges, who were to decide the appeals from them, could clearly underſtand what was the matter in diſpute, the ends of law and juſtice would be obtained, and it would be a matter of perfect indifference, whether the form and manner of drawing theſe pleadings agreed with that obſerved in the Engliſh law, or with that obſerved in the French law, or in any other law, or not. But the fact is well known

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to be otherwiſe, by all thoſe who are converſant with the law-proceedings in that province. For the pleadings in the courts of Common-pleas, at leaſt at Quebeck, (for I know leſs of thoſe at Montreal,) are often drawn up in ſo wild, and irregular, and confuſed a manner, that it is impoſſible to find out from them, what is the matter really in diſpute between the parties, and upon what grounds they ſupport their reſpective claims. This has been a misfortune univerſally obſerved and lamented, and which all perſons, converſant with law-proceedings, have wiſhed to ſee either removed or leſſened, if any method of doing ſo can be contrived. I ſpeak with heſitation upon this ſubject, becauſe it is a matter of nicety and difficulty, and by no means eaſy to be remedied. Now, it is principally with a view to remedy this inconvenience that I have propoſed, in the following plan for the adminiſtration of juſtice in that province, that the Judges, after peruſing the plaintiff's declaration, and the defendant's plea, ſhould exhibit interrogatories to them, concerning the facts which ſhould appear to them (the Judges) to be doubtfully or obſcurely ſtated in the pleadings, and which they ſhould judge to be material to the deciſion of the cauſe. This appeared to me the ſimpleſt and eaſieſt method; — I might indeed ſay, the only one, that was practicable in that country; — of bringing the matters in diſpute between the parties fully and clearly before the court, ſo that the facts, in which they agreed, ſhould

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

Plan

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

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

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

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

Each ſhire ſhould have a ſeparate ſheriff.

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

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

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

which ſhould conſiſt of one Engliſh judge and a Canadian aſſeſſor.

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

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

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

Theſe courts to ſit every week.

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

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

Method of proceeding in civil actions.

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

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

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

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

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

If

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

Juries to be summoned at the desire of either of the parties. They should be paid for their attendance.

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

Manner of appointing the juries.

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

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

A majority of the jurymen to carry the verdict.

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

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

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

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

All the verdicts of jurors to be ſpecial verdicts.

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

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

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

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

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

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

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

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

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

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

ppeals om theſe urts to e gover- ur and ncil, From theſe courts there ſhould lie two appeals; an appeal to the governour and council of the province, and another from thence to the King in his privy council. One great

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

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

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

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

e na- : of ſe ap- ls.

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

the judge, before whom it was tried, thought it reaſonable, have it tried over again by a ſecond jury, conſiſting of twice as many jurymen as the firſt jury; and the verdict of this ſecond jury ſhould be final with reſpect to the matters of fact determined by it.

A ſecond trial by a double jury.

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

Gaſpey.

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

FRANCIS MASERES,
Attorney General of the
province of Quebeck.

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

his Majesty's Secretary of State for Amer color

F. MASERES.

Con-

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

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

Ster. per Ann.

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

To the Canadian aſſeſſor, a ſalary of £. 200

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

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

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

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

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

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

Ster. per Ann.

To the king's attorney of the diſtrict, a ſalary of - - - £. 200

Beſides fees from the crown for the proſecution of criminals, and the other buſineſs he ſhould do for the crown, amounting to - - £. 300

He might likewiſe practice in the court as a private barriſter in cauſes between ſubject and ſubject.

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

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

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

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

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

If

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

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

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

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

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

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

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

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

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

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

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

Per Ann.

took place, had a ſalary of only £.200 a year each, making all together £.800 a year. Therefore the increaſe of expence in the ſalaries of the new judges is the difference between £.3000 and £.800 a year, which is yearly - £.2200

To each of the 23 members of the new legiſlative council of the province, a ſalary, or penſion, of £.100 ſterling a year, making together - - £.2300

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Of proſecutions for publiſhing ſeditious libels.

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

meaſures, that one would wiſh them to be intirely under the controul of *the people themſelves*, ſo as never to be carried on with ſucceſs but when *the people* themſelves are ſatisfied of the falſehood and miſchievous tendency, or, at leaſt, of the miſchievous tendency, of the writings which are the occaſion of them. And for this purpoſe it would be neceſſary, that the whole determination of theſe proſecutions ſhould be veſted in the juries, who are a part of the people, and may be ſuppoſed to entertain the ſame ſentiments with them. For, if the event of theſe proſecutions was to depend upon the inclinations of the judges, there would be reaſon to apprehend, that they would meet with ſucceſs much oftener than would be conſiſtent with that ſpirit of free inquiry and examination of the meaſures of government, which is neceſſary to the correction of the abuſes of power, and the preſervation of publick liberty. Thoſe magiſtrates muſt naturally be ſuppoſed to be, in ſome degree, partial to government in caſes of this kind, even from reſpectable motives. Their friendſhip and their gratitude would often contribute to make them ſo;---- not to mention their ſelf-intereſt and ambition, which would lead them to hope for future favours from the crown. For, who would be the object of the cenſures contained in the writings under proſecution? Probably the king's miniſters of ſtate, by whoſe favour and patronage they, perhaps, would have obtained their

their offices of judges, and might hope to gain ſtill higher honours for themſelves, or preferments for their families. In theſe caſes, therefore, a jury of men of ordinary rank, as, for example, of ſubſtantial houſe-keepers in the city of London, would be much leſs likely to interpret the intentions of the writers and publiſhers of ſuch writings in a ſevere manner, and to conſider the tendency of them as of dangerous conſequence to the publick, than a bench of judges would be: and yet, they would be ſufficiently intereſted in the preſervation of the publick peace (upon which the continuance of their own liberty, trade, and property would depend,) to be free from any undue biaſs of favour towards thoſe perſons, if the writings, they had publiſhed, had a real and manifeſt tendency to diſturb it: and therefore, upon the whole, they would be a ſafer and more impartial tribunal for the determination of theſe matters than the judges. It is reaſonable, therefore, that all lovers of publick liberty ſhould wiſh, that the whole power of determining the merits of proſecutions upon theſe ſubjects ſhould be veſted in the juries. But, in order to its being ſo, it is by no means neceſſary, in my apprehenſion, to depart in any degree from the rules above-mentioned, concerning the diſtinct provinces of judges and juries in the deciſion of law-ſuits, and the moral obligation, under which jurymen have been ſuppoſed to lie, to keep ſtrictly within the

bounds

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

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

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

Of the charge of falſhood in ſuch an information.

part

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

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

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

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

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

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

Of the true diſtinction between matters of law and matters of fact.

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

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

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

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

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

lirious,

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

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

Witneſſes

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

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

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

Of the tendency of a paper to produce certain miſchievous effects.

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

This tendency is alſo a matter of fact.

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

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

prove that the alluſions in queſtion did relate to the ſaid perſons of rank and power; without which relation the ſaid paper would be quite innocent and inoffenſive, and have no tendency to diſturb the publick peace. This tendency therefore of the paper complained of to diſturb the publick peace, or produce the other bad effects ſet forth in the information, is in all theſe caſes a thing capable of being proved by witneſſes, and which indeed can be proved no other way, and conſequently is a fit object of the conſideration of a jury, or, in the law-ſenſe of the words, a matter of fact. And even, if we ſuppoſe the paper in queſtion to contain neither blanks, nor initial letters, nor alluſions to particular perſons under feigned names, nor any other ſort of diſguiſe whatſoever, (which ſeldom happens) but to name all the perſons it means to ſpeak of by their known names and offices, yet even in this caſe it is certain that witneſſes may be admitted to prove, or diſprove, the tendency of the paper, that is, to confirm, or to controul and refute, that internal evidence of its tendency, which, I acknowledge, will, in ſome degree, reſult from the bare peruſal of it. For witneſſes may be brought to prove that it has actually occaſioned that diſturbance which it ſeemed to be intended to create, as, for inſtance, that it has excited a ſpirit of diſſatisfaction in the fleet or the army, or againſt the adminiſtration of juſtice by the king's

king's courts, or the like. Such evidence of the paper's having produced ſuch ill effects would be the ſtrongeſt evidence poſſible of its *tendency* to produce them. And, on the other hand, if a paper was writ that contained a real panegyrick upon a great man, couched under the form of a ſevere invective, aſcribing to him thoſe vices from which he was known to be peculiarly exempt, and denying him thoſe virtues in which he was known moſt to excell, (as, for example, calling the great duke of Marlborough an ill-bred, paſſionate, tyrannical man, that was utterly ignorant of the art of war, and quite given up to drunkenneſs, when he was known to be the calmeſt-tempered, mildeſt, beſt-bred gentleman of his age, of great ſkill in the art of war, and very temperate,) and an information ſhould be brought againſt the writer of it for writing and publiſhing a ſeditious libel, it would in ſuch a caſe be lawful for the defendant to call witneſſes to prove that the great man ſpoken of in the paper was ſo eminently free from the vices imputed to him in it, that it could only be underſtood, by all perſons who had any knowledge of his character, as a panegyrick upon him conveyed under the form of an invective, and that it had been generally ſo underſtood by all the world, and conſequently could have no tendency to excite thoſe diſturbances which a belief of his having thoſe vices would probably occaſion.

And

And if the jury believed theſe witneſſes, and conſequently were of opinion that the paper had not the pernicious tendency aſcribed to it in the information, (and which from the mere peruſal of it, without a knowlege of the character of the perſon ſpoken of in it, one would be apt to think belonged to it,) it would be their duty to find the defendant Not guilty. In the next place I will ſuppoſe the oppoſite caſe to the former, to wit, that of a ſevere invective againſt a great man, conveyed under the form of a panegyrick, commending him for virtues which he was generally thought to want, without any blanks, initial letters, or feigned names. In ſuch a caſe it would be lawful for the proſecutor to produce witneſſes to prove that the writer of the paper was a bitter enemy of the great man thus ironically commended in it;---that they had often hear'd him expreſs a very bad opinion of him, and deny him the virtues aſcribed to him in the paper, and aſcribe to him the oppoſite vices;---that they themſelves therefore underſtood the paper to be meant ironically, and that they had met with ſeveral other perſons who had all underſtood it in the ſame manner;---that not only the writer and the other enemies of the great man, but even moſt of his friends were of opinion that he was not intitled to the praiſes beſtowed on him in the paper, and that they therefore, on that account, (as well as on account of the known enmity of

the

the writer againſt the great man,) believed thoſe praiſes to be meant ironically, and intended to bring him into publick odium and contempt;---and that they actually had produced that effect, and raiſed a great diſguſt againſt him in the perſons who were moſt connected with him, and whoſe chearful obedience, aſſiſtance, and concurrence, were moſt neceſſary to his diſcharging the duties of his great office with ſucceſs and advantage to the publick. If theſe things were made out to the ſatisfaction of the jury, it would be their duty to find the writer of the paper guilty of publiſhing a ſeditious libel, notwithſtanding the apparent inoffenſiveneſs of the paper, or its want of tendency to produce any ill effect, ſo far as its tendency could be collected from the mere peruſal of it: ſo that in this, as well as in all the former inſtances, the tendency of the paper would be aſcertained by the teſtimony of witneſſes, and would conſequently be the object of the conſideration and determination of the jury. We may therefore, I think, ſafely conclude that this fourth and laſt allegation, contained in an information againſt a man for writing and publiſhing a ſeditious paper, or libel, to wit, its tendency to diſturb the publick peace, or to produce the other bad effects ſet forth in the information, is a proper object of the conſideration and determination of a jury, or, in the law-ſenſe of the phraſe, a matter of fact, as well

as

as the three former allegations, of the writing the paper, the publiſhing it, and the intention with which it was publiſhed.

I have hitherto conſidered thoſe things only as being matters of fact, or objects of a jury's conſideration, which are capable of being proved, or diſproved, by witneſſes; becauſe this is the plaineſt and cleareſt mark of diſtinction between them and matters of law that can, as I apprehend, be given. But I conceive that the province of the jury extends a degree further than this, and that they have a right to make all ſuch inferences from facts as may be made without any ſkill or knowledge of the law, even if no new evidence could be given by witneſſes in ſupport of ſuch inferences. For ſuch inferences from facts are merely operations of reaſon, which is a talent common to all men, to jurymen as well as to judges: and, with reſpect to the meaning of ſeditious papers, and the intentions of the publiſhers of them, and their tendency to produce certain bad effects ſtated in an information, it often happens that jurymen are better able to make theſe inferences than judges, even where no evidence ſhould be given by witneſſes concerning them; becauſe they have often a more extenſive intercourſe with the reſt of mankind, and a greater knowledge of the buſineſs and converſation of the world, than judges (who are men of retired lives, given up to the ſtudy of the law, and the

the diſcharge of the duties of their reſpectable offices,) can be ſuppoſed to have. Thoſe inferences therefore ought not to be called inferences of law, but inferences of fact, being a ſecondary, or ſubordinate, ſpecies of facts, derived from the more ſimple and direct facts, of which they are the circumſtances or properties. For facts may be divided into two claſſes, which it may perhaps be of ſome uſe, in conſidering this ſubject, to diſtinguiſh by the names of *primary* and *ſecondary facts*. The former, or *primary*, facts are thoſe plain and ſimple facts which are the objects of the ſenſes, and are generally proved by the poſitive teſtimony of witneſſes; ſuch as, whether ſuch a man gave ſuch another a blow, or a wound with a ſword, or fired a piſtol at him, or whether ſuch an one delivered a particular paper to ſuch another; though even theſe may ſometimes be collected by inference from circumſtances. Theſe things are ſo plainly matters of fact, that no ſophiſtry in the world can make them appear to any body to be matters of law. But the latter, or *ſecondary*, facts are facts of a more abſtract, or remote, kind, and may often be collected from the former by mere reaſoning, without the help of external teſtimony. Such is the intention of a man in breaking open and entering a houſe by night: which, if it be to commit a felony, makes the breaking and entering the houſe amount to the crime of burglary, which

of the different kinds of facts.

of primary facts.

of ſecondary facts.

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

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

Of the difference between ſecondary facts and matters of law.

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

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

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

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

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

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

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

an object of puniſhment in a temporal court, is a queſtion of law.

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

ſame

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

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

I have now gone through all I had to offer in the way of reaſon and argument, concerning the extent of the province of the jury in the trial of an information for publiſhing a ſeditious libel. I am ſenſible, I have uſed a great number of words on this occaſion, and even ſome repetitions, which I knew not well how to avoid, and which, I therefore hope, the reader will excuſe; more eſpecially as the reaſon of my treating this matter ſo fully was that he might clearly ſee the grounds upon which I have preſumed to differ in opinion from thoſe learned and reſpectable perſons who have declared, that the intention of the publiſher of a ſeditious paper is a matter of law, which the jury have no right to

conſider. The great reſpect due to thoſe eminent perſons made me at firſt almoſt afraid to differ from them, and excited me to examine the ſubject with as much care and attention as I was capable of beſtowing on it; in conſequence of which I became perfectly convinced, that their opinion was not well-grounded. And the ſame reſpect to their authority made me afterwards cautious of expreſſing the opinion I had formed in oppoſition to that which they had declared, without, at the ſame time, ſetting forth, in the fulleſt manner I could, the reaſons upon which I had preſumed to differ from them, and adopt the other opinion. And now, that I have ventured to ſtate and maintain that other opinion, I ſhall (from the ſame motive of reſpect to thoſe great perſons) endeavour to confirm and ſupport it by the authority of other great perſons who formerly held the ſame high offices of judicature with themſelves, oppoſing judge to judge, and chief juſtice to chief juſtice, in at leaſt equal numbers, and marſhalling on my ſide of the argument,

Pares aquilas, et pila minantia pilis;

leſt the weight of theſe great modern authorities ſhould be thought to over-bear the arguments, which, in the courſe of this inquiry, have been deduced from reaſon only,

in

in favour of what I take to be the true opinion upon the ſubject.

In the famous trial of the ſeven biſhops, who were proſecuted in the laſt year of the reign of king James II. by an information in the court of King's-bench for publiſhing a ſeditious libel, Sir Robert Sawyer, (who had been attorney-general,) Mr. Finch, and Mr. Somers, (who was afterwards Lord-chancellor,) were of counſel for the biſhops, and Sir Thomas Poways, (the then attorney-general,) and Sir William Williams, (the then Sollicitor-general,) were of counſel for the Crown. Sir Robert Sawyer contended, "That "both the falſity of the paper, and that it "was malicious and ſeditious, were all mat-"ters of fact to be proved;" and made this the firſt head of his ſpeech to the jury: ſo that here we ſee, that the falſehood of the paper, the malicious intention of the writer, and the ſeditious tendency of the paper, are all aſſerted by this learned lawyer to be matters of fact and objects of the conſideration of the jury. His brother-counſel held the ſame language. Mr. Finch expreſſed himſelf thus: "If you, gentlemen, ſhould think "that there is evidence to prove the deli-"very, by the biſhops, of the paper ſet forth "in the information, yet, unleſs their pre-"ſenting it to the king in private may be "ſaid to be a malicious and ſeditious libel, "with

Authorities in ſupport of the foregoing poſitions.

" with an intent to ſtir up the people to ſe-
" dition, and to diminiſh the King's prero-
" gative and authority: unleſs all this can
" be found, there is no man living can
" find the biſhops guilty upon this informa-
" tion." This was aſſerting, that the *ill intention* of ſtirring up diſcontents in the minds of the people againſt the King, was an eſſential part of the charge, and one that the jury ought to take into their conſideration, and not leave to the judges as a mere inference of law. Mr. Somers ſpoke next, and ſaid, That " the paper could not poſſibly ſtir up ſedi-
" tion in the minds of the people, becauſe
" it was preſented to the King alone. Falſe
" it could not be, becauſe the matter of it
" was true. There could be nothing of ma-
" lice: for the occaſion was not ſought; the
" thing was preſſed upon them. And a libel
" it could not be, becauſe the intent was in-
" nocent." The attorney-general, Powys, thereon ſaid, " That he ſhould not *now* meddle
" with what the defendant's counſel had of-
" fered, becauſe it was not pertinent." And then Sir Robert Wright, the chief juſtice, interpoſed with theſe remarkable words: " Yes,
" Mr. Attorney, I'll tell you what they offer;
" which it will lie upon you to give an anſwer
" to: they would have you ſhew how this
" has diſturbed the government, or dimi-
" niſhed the King's authority." Here then we have king James II'd's chief juſtice of the King's-

King's-bench expreſsly declaring in this celebrated trial at bar, that the tendency of the paper in queſtion, to diſturb the government, ought to be made out to the ſatisfaction of the jury. Mr. Juſtice Powell ſaid, "The "contrivance and publication are both mat-"ters of fact, and, upon iſſue joined, the "jurors are judges of the fact, *as it is laid* "in the information." Mr. Juſtice Holloway, after the evidence had been ſummed up to the jury, ſpoke theſe words: "The "queſtion is, whether this petition be a li-"bel, or no. Gentlemen, *the end and intent* "of every action *is to be conſidered*; and like-"wiſe in this caſe we are to conſider the "nature of the offence that theſe noble per-"ſons are charged with. It was for deli-"vering a petition, which, according as they "have made their defence, was with all hu-"mility and decency that could be: ſo that, "if there was no *ill intent*, and they were "not men of evil lives, or the like, to de-"liver a petition cannot be a fault, it being "the right of the ſubject to petition. *If* "*you are ſatisfied there was an ill intention of* "*ſedition, or the like, you ought to find them* "*guilty*: but, if there be nothing in the "caſe of that kind, I think it is no libel. "*It is left to you, gentlemen*: but that is my "opinion." The jury are here expreſsly directed to conſider, whether the biſhops had any intention of ſedition, or not, in preſenting their

their petition to the King, and to find them guilty, or not guilty, accordingly. So far was this judge from thinking, that the intention of the defendants was a mere inference of law, which the jury had no authority to make. Mr. Juſtice Powell went further ſtill, and ſaid, that the falſehood of the paper, as well as the malicious intention of the publiſher of it, and its tendency to diſturb the government, ought to be proved: by which we may obſerve, by the bye, that the modern opinion, "That the falſehood charged upon "a libel in an information, is not a material "part of the charge, and needs not be proved," was not at that time univerſally adopted by the judges. His words are as follows: "Truly, I cannot ſee, for my part, any thing "of ſedition, or any other crime, fixed upon "theſe reverend fathers. For, gentlemen, "to make it a libel, it muſt be falſe, it muſt "be malicious, and it muſt tend to ſedition. "As to the falſehood, I ſee nothing that is "offered by the king's counſel, nor any "thing as to the malice. Now, gentlemen, "the matter of it is before you; you are to "conſider of it, and it is worth your conſi-"deration, &c." Such were the directions of chief Juſtice Wright, and Juſtice Holloway, and Juſtice Powell, at this famous trial: by which we ſee, that the intention of the defendants in publiſhing the petition, or paper, and the tendency of the paper to raiſe diſ-

contents

contents in the minds of the King's ſubjects againſt his government, were ſo far from being conſidered by them as mere inferences of law, which they, the judges, only had a right to make, that they were recommended to the conſideration of the jury as the principal objects, to which it was neceſſary for them to attend. And chief Juſtice Holt appears to have been of the ſame opinion, when he ſummed up the evidence to the jury upon the trial of the information againſt Tutchin, the writer and publiſher of certain papers, called *The Obſervators*, in the year 1704. His words, on that occaſion, were as follows: "Gentlemen of the Jury, this is an infor-"mation for publiſhing libels againſt the "Queen and her government." And then, after ſtating the proof of the publication, and reading ſome paſſages from *The Obſervators*, he goes on in this manner: "So that, now you "have heard this evidence, you are to con-"ſider whether you are ſatisfied that Mr. "Tutchin is guilty of writing, compoſing, "and publiſhing theſe Libels. They ſay they "are innocent papers, and that nothing is a "Libel but what reflects upon ſome parti-"cular perſon. But this is a very ſtrange "doctrine, to ſay it is not a libel reflecting "on government to endeavour to poſſeſs the "people that the government is male-ad-"miniſter'd by corrupt perſons that are em-"ployed in ſuch and ſuch ſtations, either in

"the

" the navy or army." For it is very necessary " for all governments that the people ſhould " have a good opinion of it: and nothing " can be worſe than to endeavour to procure " any animoſities as to the management of it. " This has been always looked upon as a " crime; and no government can be ſafe, " without it be puniſhed. Now, *you are to* " *conſider*, whether thoſe words, I have read " to you, do not tend to beget an ill opinion " of the adminiſtration of the government." Here we find this able Chief Juſtice expreſsly directing the jury to conſider *the tendency* of the papers in queſtion, to wit, Whether they do not tend to beget an ill opinion of the adminiſtration of the government? How different is this conduct from aſſerting that this tendency is a mere inference of law, which the judges only have a right to make, without any concurrence of the jury? From theſe authorities, together with the reaſons above ſet forth, I flatter myſelf, that the reader will join with me in concluding, that, upon the trial of an information for writing and publiſhing a ſeditious paper, the jury have a right to determine all the particulars of the charge, the malicious intention of the writer, and the miſchievous tendency of the paper, as well as the more ſimple facts of the writing and publication of it, and the meaning of the blanks and feigned names in it; and that the only queſtion, which the judges are

to

to determine, is, whether, if the whole information, with all the allegations contained in it, the malicious intention of the writer, and the miſchievous tendency of the paper, be admitted by the defendant, or found by the jury, to be true, the conduct ſo deſcribed and found, is an object of legal cenſure. I could wiſh, that even this laſt particular were alſo to be determined by the jury: but it rather, I muſt confeſs, appears to me to belong to the province of the judges.

The occaſion of entering into this diſcourſe about informations for ſeditious libels, and the right of the jury to determine all the matters contained in them, was to ſhew that the propoſal made above in the foregoing plan for the adminiſtration of juſtice in the province of Quebeck, to wit, "That the juries "in that province ſhould have only ſpecial "iſſues referred to them for their determi-"nation," would not at all diminiſh their power in the trial of informations for this offence. This, I preſume, is now ſufficiently apparent. For, ſince all the allegations, contained in theſe informations, are matters of fact, or fit objects of a jury's conſideration, it is evident that they would retain their power of determining them, when they ſhould be ſeparately and diſtinctly denied by the defendant, (according to the method propoſed in that plan,) as well as now, that they are

denied by him in the lump, by the general plea of *Not guilty*. In that caſe, his plea would run thus: 1ſt, That he did not write the paper in queſtion; 2dly, That he did not publiſh it; 3dly, That he had no bad intention in publiſhing it, but did it by miſtake, or not knowing its contents, or not with a view to ſpread it through the world; but to prevent its being ſo ſpread, by delivering a copy of it to a magiſtrate; or becauſe he conceived it to be likely to produce different effects from thoſe deſcribed in the information; and 4thly, That it has not, in truth, the tendency aſcribed to it in the information, but a tendency to produce very different effects. And the jury would give ſeparate verdicts, diſtinctly upon all theſe different queſtions. In both ways of proceeding the ſame matters would be conſidered and determined by them: only in the one way they would do it ſeparately and diſtinctly, or in the detail, and in the other they would do it in the lump.

I hope therefore, that the friends of Publick Liberty and the Trial by Jury, will not conſider me as an enemy to that excellent Inſtitution, on account of the alterations I have recommended to be made in it in the province of Quebeck, in order to render it more convenient and agreeable to the people of that province. But, if, after all I have alledged in ſupport of them, theſe alterations,

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in that excellent mode of trial, ſhould be thought whimſical and injudicious, or dangerous to the liberties of the people, I beg it may be remembered, that the Canadians are, upon the whole, well pleaſed with the trial by jury, in civil matters as well as criminal, even with all the imperfections and inconveniences, which they have objected to in its preſent form; as appears by their uſually having choſen, during the ſpace of ten years, to have their civil ſuits, in the courts of common-pleas in that province, decided by a jury, whenever the matter in diſpute has been of any conſiderable value, although they might, if they had pleaſed, have left the whole deciſion of them to the judges. And therefore, I hope, this excellent mode of trial, of which they have been cauſeleſsly deprived by the late Quebeck-act, will be reſtored to them.

A Remark on the Poſſibility of reviving ſome Parts of the French Law in the Province of Quebeck, for the Satisfaction of his Majeſty's new Canadian Subjects in the ſaid Province, with Reſpect to the Settlement of their Families, without revoking his Majeſty's Proclamation of October, 1763.

IT has been ſhewn above in pages 285 - 292, that the king had, by the articles of capitulation in September, 1760, and the definitive treaty of peace in February, 1763, reſerved to himſelf a power of introducing the Engliſh laws into the province of Quebeck, in lieu of the cuſtom of Paris, and other French laws and uſages, that had been obſerved in it in the time of the French government. And it has been ſhewn alſo, in the ſame place, that his Majeſty, by his royal proclamation in October, 1763, did make uſe of the power, ſo reſerved to him, for the purpoſe of introducing the laws of England into the ſaid province, as well as the Engliſh mode of government by a governour, council, and aſſembly. The latter inſtitution, to wit, the government by an aſſembly he did not promiſe

promiſe to eſtabliſh immediately, but only *as ſoon as the ſituation and circumſtances of the province would admit thereof*, which was generally underſtood to mean as ſoon as there was a ſufficient number of proteſtant landholders in the province, to afford to the Canadians a reaſonable choice of members, to conſtitute ſuch aſſembly: but the other regulation, the eſtabliſhment of the laws of England in the province, was to take place *immediately*, his Majeſty aſſuring his ſubjects, (who ſhould go and reſide in the ſaid province,) *that, in the mean time, and until ſuch aſſemblies can be called as aforeſaid, all perſons inhabiting in, or reſorting to, his Majeſty's ſaid colonies*, [Granada, Eaſt-Florida, Weſt-Florida, and Quebeck,] *may confide in his royal protection for the enjoyment of the benefit of the laws of his realm of England:* and that for that purpoſe his Majeſty had given power under the great ſeal to the governours of his Majeſty's ſaid new colonies to erect and conſtitute, with the advice of his Majeſty's councils of the ſaid provinces reſpectively, courts of judicature and publick juſtice within the ſaid provinces, *for the hearing and determining all cauſes, as well criminal and civil, according to law and equity, and as near as may be, agreeably to the laws of England*; with liberty to all perſons, who may think themſelves aggrieved by the ſentence of ſuch courts, in all civil caſes, to appeal, under the

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uſual limitations and reſtrictions, to his Majeſty in his privy council. Here is a ſolemn act of the of the crown, under the great ſeal of Great-Britain, introducing the laws of England into the province of Quebeck. And this was accompanied by another important inſtrument, likewiſe under the great ſeal of Great-Britain, the commiſſion of Captain-general and Governour in chief of the province of Quebeck, given to General Murray, purſuing the ſame plan, of eſtabliſhing the Engliſh law in the province, that was adopted by the proclamatin. And theſe two inſtruments, which proceeded immediately from the royal authority, were followed by provincial ordinances made by Governour Murray and his council in conformity to them, erecting courts of judicature in the province to adminiſter juſtice according to the laws of England. And theſe courts ſat and acted for ten years together agreeably to the ſaid ordinances; and all ſorts of contracts were made in the province upon the ſuppoſition, that thoſe laws were in force in it, and were likely to continue ſo; and the bulk of the Canadian inhabitants of the province ſeemed very well pleaſed with their condition, as well as the Britiſh ſettlers in it. Who, that attends to theſe plain facts, can help being aſtoniſhed, that, at the end of about ten years after the introduction of this Engliſh ſyſtem of government, namely, in June, 1774, an act of parliament

parliament ſhould paſs, *to revoke, annul, and make void*, this ſeries of ſolemn publick inſtruments? To what promiſes of government can people hereafter truſt! --- It would ſurely have been more decent, and would have ſhewn a greater regard to the dignity of the crown, and a greater tenderneſs for its honour, to have left the proclamation and the governour's commiſſion in force in the province, and to have revived in the province only thoſe few parts of the former French ſyſtem of laws, that were judged to be moſt eſſentially neceſſary to the domeſtick peace and ſatisfaction of the Canadians; which, I believe, would have been found to be nothing more than their laws of tenure, their modes of conveying land, the laws of dower and inheritance of landed property, and perhaps of the diſtribution of the goods of perſons who die inteſtate. Surely, this would have been a more prudent, decent, and honourable way of proceeding than totally to reſcind the royal proclamation of October, 1763, and all the other important publick acts above-mentioned! And this more diſcreet and cautious way of proceeding ſeems even to be ſuggeſted by ſome words in the proclamation itſelf, which ſeem to have been intended to preſerve ſome parts of the French laws of the province, which might be thought to be moſt neceſſary to the ſatisfaction of the Canadians, and to prevent

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the immediate introduction of the Engliſh laws upon thoſe heads. The words, I mean, are theſe, "That the courts of judicature, to be erected in the ſaid province, ſhall determine all cauſes, as well criminal as civil, according to law and equity, and, *as near as may be*, agreeably to the laws of England." Theſe words, *as near as may be*, muſt have ſome meaning. And the moſt natural and obvious ſenſe that can be put upon them, ſeems to be that of an intimation to the king's Engliſh ſubjects, who ſhould go and ſettle in the province in conſequence of this proclamation, that there might be *ſome* ſubjects (of a nature not to affect their principal concerns, their perſonal liberty, and the ſecurity of their commercial property,) upon which the laws of England ought not to be, and would not be, introduced into it. And theſe, we may preſume to have been (though I confeſs, it is rather to be lamented, that they were not expreſſed in the ſaid proclamation more diſtinctly) the modes of the tenure of lands, the methods of conveying them, and the tranſmiſſion of them by dower and inheritance upon the deaths of their then preſent proprietors. For theſe, it is certain, are parts of the law of England, which, if they had been ſuddenly introduced into the province, would have created great uneaſineſs and confuſion: and conſequently, we may reaſonably ſuppoſe them to have been thoſe parts of the

law

law of England, which his Majeſty, in his royal wiſdom and clemency, intended to except, by the words, *as near as may be*, from the general body of the laws of England, introduced by the proclamation. And theſe, I will venture to ſay, are the only parts of the law of England, the introduction of which into the province would be attended with thoſe unhappy conſequences. And accordingly, we find that theſe, and the laws that exclude papiſts from places of truſt and profit, (which latter laws can affect but a very few perſons in the province) are the only parts of the law of England to which the Canadian petitioners, who have deſired to have their antient laws reſtored to them, have made any objection. And if theſe petitioners have objected to no other parts of the law of England, we may be ſure that the bulk of the Canadian freeholders, in the province would not object to them, becauſe it is well known that they are much better pleaſed with the Engliſh laws and government, than the handful of men whoſe names are ſigned to that petition. The Canadians, therefore, might have been made eaſy without *revoking, annulling, and making void*, the royal proclamation and promiſe above-mentioned, by only interpreting thoſe words, *as near as may be, agreeable to the laws of England*, in ſuch a manner as to preſerve to them their antient French laws and cuſtoms upon thoſe tender

ſubjects that relate to their domeſtick happineſs; or, if thoſe words are not thought to be capable of ſuch an interpretation, by reviving and reſtoring, by expreſs enacting words, and in oppoſition to the proclamation, the French laws upon thoſe ſubjects. The revoking the proclamation *only ſo far* would have been juſtifiable. For it would only have been correcting an error, or, rather, ſupplying an omiſſion in it, that had ariſen from precipitation; ſince no one can ſuppoſe, however general the words of the proclamation may be, (unleſs they had been quite expreſs to that purpoſe,) that it was the intention of the framers of it, at once to overturn the laws of dower and inheritance throughout the province. And this would have given no diſſatisfaction to the Engliſh inhabitants of the province, who are the perſons to whom the promiſes in the proclamation are principally addreſſed, and who have ſettled in the province in conſequence of them. And, where the perſons to whom a promiſe is made, conſent to the non-performance of it, the perſon who made it, is, by all the rules of juſtice, abſolved from the obligation to obſerve it; even when it has been made with ſolemnity and deliberation. Theſe, therefore, are the parts of the French laws of the province of Quebeck, which might have been either revived, (if they had been ſuppoſed to have been aboliſhed,) or confirmed,

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(if they had been ſuppoſed to be ſtill legally in force,) by an act of parliament, without any breach of the royal promiſe made to the Engliſh ſettlers in that province, or rather, indeed, to all the inhabitants of it: for the promiſes in the proclamation were made to all the inhabitants of Canada, the French as well as the Engliſh, though they ſeem principally to have been intended as inducements to the latter to reſort thither; and the bulk of the French, or Canadian, inhabitants of it have (as we have ſeen,) been well-pleaſed with the introduction of the Engliſh laws into the province, as far as they have had experience of them. But no arguments can be juſtly derived from hence for reſcinding (as has been done by the late act of parliment,) the whole proclamation, ſo as to deprive all the inhabitants of that province, both Canadian and Engliſh, of thoſe excellent parts of the law of England, which muſt neceſſarily be ſuppoſed to have been intended to be introduced into the province by thoſe emphatical words in the proclamation, which promiſe to the perſons who ſhall reſort to it, and reſide in it, *the enjoyment of the benefit of the laws of England.* Now theſe words, as I conceive, muſt be ſuppoſed to have been meant to introduce at leaſt the two following parts of the law of England; to wit, firſt, thoſe parts of it which are particularly beneficial to the ſubject, by the protection of his perſon and property againſt

the oppreſſions of men in power, and, ſecondly, thoſe parts of it which have relation to commerce, and the method of enforcing the payment of debts contracted in the courſe of it, and ſettling the diſputes between the merchants that ſhould be concerned in carrying it on. For, theſe are the perſons whom the proclamation more particularly invites and exhorts to go and ſettle in that province: and theſe are the laws of England, which they muſt be ſuppoſed to be moſt attached to, and to have wiſhed to ſee introduced into the ſaid province before they ventured their perſons and property into it, and to have believed and underſtood to have been introduced there by the ſaid proclamation. Of the firſt of theſe two kinds of laws are, in a moſt eſpecial manner, the petition of right and the other laws of England, relating to the writ of *Habeas corpus*, both according to the common law and by the ſtatute, for the protection of perſonal liberty; which diſtinguiſhes the ſubjects of Great-Britain from thoſe of almoſt every other ſtate in the univerſe. And of this kind alſo is the trial by jury in all criminal matters, and in all civil actions for wrongs, or injuries, received, in which a pecuniary compenſation is to be given to the injured party for the injury he has ſuſtained; ſuch as actions of ſlander, battery, and falſe impriſonment; which partake, in a great meaſure, of the nature of criminal matters. For, in all thoſe caſes, it is obvious

obvious that the intervention of a jury of one's equals to determine, in the caſe of a criminal proſecution, upon the guilt, or innocence, of the party accuſed, and, in the caſe of actions of treſpaſs for injuries received, to aſſeſs the damages ſuſtained by the ſufferer, muſt be ſingularly uſeful (from the ſympathy, which the parity of their condition muſt inſpire them with for the accuſed, or the injured, party,) to the protection of the weak againſt the ſtrong, the poor againſt the rich, and the private man againſt the powerful and high-ſtationed oppreſſor. And of the ſecond kind are the laws relating to inſurances, bankruptcies, the limitation of actions, the proceſs of impriſonment for debt, and the trial of matters of contract, where the cauſe of action is of a commercial nature, (as well as of matters of injury in all caſes,) by a jury; and many other important articles. In all theſe things it is evident beyond a doubt, that the royal promiſe was intentionally and deliberately given, that the laws of England ſhould be obſerved in that province. In theſe points, therefore, the proclamation ought not, in point of juſtice, to have been revoked by the late Quebeck-act; and now, that it has been revoked by it, it ought, from the ſame motive of juſtice, to be re-eſtabliſhed. For, great and ſupream as I allow the power of the parliament to be, it cannot make *that* to be juſt which is in its nature unjuſt, as the reſumption of *the benefits*

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of the laws of England, (the *Habeas corpus*, and the trial by jury in civil actions, and the like,) from the Britiſh and other inhabitants of the province, to whom they had been granted by the king's proclamation, appears evidently to be. I therefore hope, that, in ſome calmer moment than that in which the Quebeck-bill was paſſed, the ſaid royal proclamation will be re-eſtabliſhed in the province with reſpect to theſe beneficial parts of the law of England, which had been introduced by it into the province, and enjoyed by its inhabitants for ten years, and that the French laws, that ſhall be permitted to continue in it, will be reſtrained to a few diſtinct heads, that may be thought moſt neceſſary to the family-peace and domeſtick happineſs of the Canadians, and the Engliſh law again eſtabliſhed in the province as *the general law* of it, by which the courts of juſtice ſhould be governed in their deciſions upon every other ſubject, except thoſe few on which the French laws ſhould have been ſo reſerved.

The juſtice and reaſonableneſs of reſtoring the Engliſh law on ſome of the more important ſubjects that have been juſt now mentioned, ſeems to have been felt and acknowledged by his Majeſty's miniſters of ſtate ſoon after the paſſing of the unfortunate Quebeck-bill; though, while that bill was in the houſe of commons, they voted for the rejection of a clauſe that was offered by Mr. Dempſter for preſerving

preſerving to the inhabitants of that province the Engliſh laws relating to the writ of *Habeas corpus*, and likewiſe of another clauſe for preſerving the trial by jury. But very ſoon after the bill was paſſed, a draught of a provincial ordinance was prepared by Mr. Hey, the chief juſtice of the province, by the direction of the Earl of Dartmouth, (at that time his Majeſty's ſecretary of ſtate for America,) in order to be carried over by Mr. Hey, and propoſed to the Governour and new legiſlative council of the province, and by them paſſed into a law; in which draught the Engliſh laws relating to the writ of *Habeas corpus*, and to the trial by jury in civil caſes, (under certain reſtrictions and modifications,) and likewiſe the Engliſh laws relating to commercial matters, were to be re-eſtabliſhed in the province. This draught of an ordinance was accordingly carried over to the province by Mr. Hey, (who arrived there on the 19th day of June laſt, 1775,) and was propoſed to the legiſlative council of the province in the month of September following, and there debated. The new French Roman-catholick members of the council oppoſed it, but without (as it is ſaid) alledging any reaſons for their oppoſition: but the reſt of the council ſeemed diſpoſed to paſs it; inſomuch that it would probably have paſſed into an ordinance of the province, if the invaſion of the province by the provincials under General Montgomery had not obliged the Governour

Governour to break up the meetings of the council before they had compleated their diſcuſſion of it. All this, I am aſſured, has been publickly declared by Mr. Hey, in his ſpeech in the houſe of commons, upon a late motion of the Hon. Mr. Charles Fox; and therefore, I make no ſcruple to mention it as a thing both certain and notorious. Now, ſince theſe very conſiderable alterations of the Quebeck-act, in favour of Engliſh Law and Liberty, are confeſſed to be juſt and reaſonable, it can hardly be denied that, in order to do the inhabitants of that province compleat juſtice in thoſe reſpects, they ought to be made by the ſame high authority that paſſed the act which they are intended to correct, that is, by the authority of parliament. For, if they are made only by the aforeſaid legiſlative council, the people of the province will not have reaſon to conſider them as permanent regulations; ſince the ſame legiſlative council, that eſtabliſhes them one year, may repeal, or aboliſh, them the next. They ought, therefore, to be eſtabliſhed by act of parliament, with a clauſe to reſtrain the legiſlative council of the province from ever abrogating, or abridging, them. When that is done, the people of the province will have the authority of the higheſt legiſlature known in the Britiſh government for the ſecurity and permanency of their enjoyment of them. And that, no doubt, will ſatisfy them.

Whenever

Whenever an act of parliament ſhall be paſſed for that purpoſe, (which from the ſtrong reaſons of juſtice that call for it, I cannot doubt, will, one day or another, be done,) I apprehend, that the beſt way of doing it will be to revive the king's proclamation of October, 1763, and re-eſtabliſh the law of England in the province, as *the general Law* of it, and to enact the continuance of the French laws upon a few particular heads, to be enumerated or ſpecified in the act, (ſuch as the tenure of lands, the modes of conveying them, the tranſmiſſion of them by dower and inheritance, and the like,) as being thoſe parts of the French law which the King, in his royal wiſdom and clemency, *had originally meant*, at the time of iſſuing his ſaid proclamation, to continue to his new Canadian ſubjects by virtue of the words, *as near as may be*, that have been already mentioned. This method of proceeding will be both more honourable to the crown, and likewiſe much more ſafe and prudent with reſpect to the convenient adminiſtration of juſtice in that province, than to revive particular branches of the Engliſh law, (ſuch as the laws relating to the writ of *Habeas corpus*, and the trial by jury in civil matters, and the like,) and to leave the French law as the general law of the province in all matters of property and civil rights, except thoſe heads upon which the Engliſh law ſhall have been ſo revived. For, as Engliſhmen are

likely to be the King's judges in that province, (unleſs his Majeſty ſhall think fit to procure judges from amongſt the advocates at the parliament of Paris; which is not to be ſuppoſed;) it is evidently deſireable that the laws, which they are to adminiſter, ſhould be thoſe which they underſtand, and are capable of adminiſtring with ſkill and eaſe, that is, the laws of England, rather than the French laws, with which they will be utterly unacquainted. And, therefore, (independently of the intrinſick merit of the Engliſh laws, and their ſuperiority to the French laws in other points beſides the protection of perſonal liberty and the trial by jury, of which I do not pretend to be a judge;) it will contribute to the due, regular, and expeditious, adminiſtration of juſtice in the province, that the laws, by which it is to be govern'd, ſhould be, as much as poſſible, the Engliſh laws, and conſequently that the French laws ſhould be continued in it upon only a few ſubjects, in which they were judged to be peculiarly neceſſary to the happineſs and ſatisfaction of the Canadians. And to this we may add, that the more the Canadians become acquainted with Engliſh laws, cuſtoms, and manners, the more they will be attached to the Engliſh government, and the leſs will they be diſpoſed to return to that of France. And, therefore, upon the whole, it ſeems highly expedient that the Engliſh law ſhould be again eſtabliſhed as *the general law* of the province, in

in civil matters as well as in criminal, except upon a few ſubjects, concerning which it may be thought neceſſary for the ſatisfaction of the Canadians, to continue the uſe of the French laws.

A ſhort Review of the principal Clauſes of the Quebeck-act, ſhewing that it is by no Means an Act of Indulgence towards the Bulk of the French, or Canadian, Inhabitants of that Province.

IT has often been matter of ſurprize to me to hear the Quebeck-act defended by its patrons as a meaſure proceeding from a ſpirit of indulgence towards his Majeſty's new, or French, ſubjects in the province of Quebeck, and calculated to gain their affections, and engage their gratitude to government for deviating ſo far from its uſual maxims in order to give them ſatisfaction. For to me it appears to be the reverſe of all this, and to be fitted to offend and alarm them in a high degree, and diminiſh the reſpect and gratitude, which they had before entertained for the favours which they had till then received and

enjoyed under the Britiſh government. And we have ſeen, from their behaviour in the courſe of the laſt ſummer, that it has had this effect upon them; ſince they let a ſmall body of the troops of the united, or revolted, provinces take poſſeſſion of the province without any reſiſtance from them, when, if they had been well-pleaſed with the laſt arrangement of the province by the Quebeck-bill, they might eaſily have made head againſt them, and driven them out of the province. But, like the Romans, on I forget what occaſion, when diſſatisfied with the treatment they received from their patrician magiſtrates, *vinci ſe patiebantur*. Now, that it was reaſonable to expect, that the Quebeck-act would be thus diſagreeable to them, will appear by the following ſhort examination of its principal contents.

In the firſt place we will conſider the operation of this act with reſpect to religion; on which ſubject it is aſſerted by its patrons to be peculiarly indulgent to the Canadians.

Now, with reſpect to religion, the Quebeck-act produces the two following changes in the condition of the province. In the firſt place it gives the Roman-catholick prieſts a legal right to demand their tythes from their Roman-catholick pariſhioners, which they had not had till then ever ſince the conqueſt of the province by the Britiſh arms. This compulſion

pulſion upon the people to pay their prieſts the tythes is not agreeable to them: they were better pleaſed with the option they before enjoyed, of paying them, or not paying them, as they liked beſt.

As to the mere toleration of their religion, with the uſe of their churches for the performance of divine ſervice according to the church of Rome, they had it in the ampleſt manner poſſible before the late act: ſo that the late act could do them no good in this reſpect, but only ſuper-added to this perfect toleration the diſagreeable compulſive obligation to pay their prieſts the tythes. There is, therefore, no kindneſs ſhewn to the Canadians in this firſt proviſion of the Quebeck-act with reſpect to religion. See above in pages 147--- 152, and 315, 316, 317--- 321.

The ſecond proviſion of the Quebeck-act with reſpect to religion, is to take away the diſtinction between proteſtants and papiſts with reſpect to the capacity of holding places of truſt and profit in the province. The inhabitants of that province may now be juſtices of the peace, judges, and members of the legiſlative council, and even may hold military commiſſions, without taking any of the proteſtant teſts, not even the oath of ſupremacy. An army of papiſts, commanded by popiſh officers, may now be lawfully raiſed in the province

vince of Quebeck, whenever his Majeſty ſhall think proper, ſuppoſing it to be true (as ſome eminent lawyers are reported to have lately aſſerted,) that the king may legally maintain as many troops as he pleaſes in the dependant dominions of the crown of Great-Britain, that lie without the realm, or iſland of Great-Britain. And, if this is not true, it will ſtill be lawful for his Majeſty to raiſe a popiſh army in Canada in all thoſe caſes (whatever they may be,) in which it would before the ſaid act have been lawful to raiſe a proteſtant army there. This is what king James II's parliament refuſed to conſent to his doing in England, notwithſtanding their great devotion to him in other particulars, and notwithſtanding they had been elected during the time that many of the cities and boroughs, by which they were choſen, were governed by the magiſtrates who had been ſet over them in the laſt years of Charles II's reign, when they had been new-modelled according to the pleaſure of the court. This parliament gave king James a much larger revenue than had been enjoyed by his predeceſſor, king Charles II; and it attainted the duke of Monmouth without a trial: but it would not conſent to aboliſh the teſt-act and put the ſword (that moſt important truſt,) into the hands of papiſts. Yet this is now made practicable in Canada by the late act, ſuppoſing it to be lawful for the king to raiſe any troops at all in that province.

vince. And the Canadians have entertained an opinion, that it was the deſign of government to raiſe a body of troops amongſt them to be employed in the invaſion of the neighbouring Engliſh provinces. Now, this ſecond proviſion of the Quebeck-act with reſpect to religion, whereby papiſts are rendered capable of holding places of truſt and profit, is diſagreeable to the bulk of the Canadians on the four following accounts:

In the firſt place, it makes an opening for their own nobleſſe, and other former ſuperiours, to come again into places of authority over them, to be their judges, juſtices of the peace, &c. This they are alarmed at, becauſe they like the behaviour of the Engliſhmen, who have held thoſe offices of magiſtracy over them for theſe fifteen years paſt, much better than that of their own former ſuperiours; having found the Engliſh magiſtrates to behave towards them with a greater degree of impartiality, mildneſs, and moderation.

Secondly, they are afraid, that they ſhall be made to ſerve as ſoldiers under their ſaid former ſuperiours, and thereby be brought under a ſtill greater degree of ſubordination to them, than if they are made ſubject to their power only in the capacity of civil magiſtrates. Of this averſion to ſerve as ſoldiers under their own ſeigniors and nobleſſe we have ſeen an example

example in the anſwer made by the Canadians of the ſeigniory of Terrebonne to captain Hamilton, " That, if their ſervices were wanted as ſoldiers, they deſired to have Engliſh officers to command them, and that they would follow ſuch officers to the world's end." See above, pages 73 and 74. This objection to the Quebeck-act, as being likely to bring them again into ſubjection to their nobleſſe in a military capacity, is of the ſame nature with their firſt objection to it, which ariſes from the danger to which it expoſes them of falling again under ſubjection to the ſame perſons in a civil capacity: but it holds in a much higher degree, inaſmuch as a military ſubjection to perſons they do not like, is more to be dreaded than a ſubjection to them only in a civil capacity.

Thirdly, they obſerve, that a great deal of money is diſtributed to their nobleſſe and other favourites of government, in the form of ſalaries, or penſions; ſuch as the ſalaries of £. 100 *per annum*, to the 23 members of the legiſlative council; the half-pay to the officers who ſerved againſt the Indians in the year 1764; the ſalaries of £. 500 a year each, to three judges at Montreal, and the like, to three judges at Quebeck, (inſtead of £. 200 a year each, which the judges of thoſe places, who were then but four in number, received before the late Quebeck-act,); the large ſalary of £. 1200 a year

to

to the chief juſtice of the province, though they know that very few of their civil cauſes are decided in his court; the ſalary of £.600 a year to the Lieutenant-governour, notwithſtanding the governour's reſidence in the province; and other the like augmentations of the publick expence of the province. And this increaſe of the publick expence of the province, together with that of the pay of the officers of the body of Canadian troops, which they ſuppoſe it to be the intention of government to raiſe amongſt them, they apprehend will ultimately be raiſed upon them hereafter by further taxes, to be impoſed for that purpoſe; not imagining that Great-Britain will continue to bear much longer ſo unneceſſary a burthen on her own revenue. This apprehenſion touches them in a tender point, and has cauſed them to make the exclamation mentioned in page 99. See above in pages 98, 99 -- 102, 103, 104 --- 370 --- 378.

In the fourth place they dread the being obliged to ſerve as ſoldiers, and made to take a part in the preſent civil war in America. This they dread, not only on account of their averſion to being commanded by their own nobleſſe and ſeigniors, but in itſelf, even tho' they ſhould be commanded by Engliſh officers; becauſe they well know, that, if they ſhould once be brought to act offenſively againſt the inhabitants of the Engliſh provinces, they

will ever after be marked out by thoſe inhabitants (whom they know to be much more numerous and powerful than themſelves,) as the objects of their hatred and revenge. This they juſtly dread as the greateſt misfortune that can befall them; and therefore they diſlike the clauſe in the Quebeck-act, which enables papiſts to hold military commiſſions, inaſmuch as it ſeems calculated to expoſe them to this evil by making it legal for the government to raiſe regiments among them to be employed againſt the other colonies. See this matter more fully conſidered above, in pages 238---243.

For theſe four reaſons the aforeſaid clauſe of the Quebeck-bill, which enables papiſts to hold places of truſt and profit in the province, (and which, one would naturally think, ſhould be agreeable to the Canadians,) is, in fact, agreeable only to the few perſons in the province, who either have obtained, or hope to obtain, ſuch places in it; but is alarming and diſguſting to the great body of the Canadian people.

Of the effect of the Quebeck-act with reſpect to the laws of the province.

I come next to conſider the operation of the Quebeck-act with reſpect to the laws of the province. Now the change produced by this act with reſpect to the laws of the province, is to aboliſh the Engliſh laws, and revive the French laws *in all matters of property and civil rights*. By theſe very general words it has

has been underſtood in the province, that not only the laws relating to private property, (ſuch as the tenure, alienation, and deſcent of land, and the diſtribution of the goods of perſons who die inteſtate, and the like,) but thoſe relating to the powers of government and the protection of liberty, were to be the ſame that were in uſe in the time of the French government; and conſequently that the Engliſh laws relating to the writ of *Habeas corpus*, and the petition of right, and the trial by jury in civil actions, were aboliſhed. This was by no means agreeable to the bulk of the Canadian inhabitants of the province, any more than to the Britiſh ſettlers in it, they having greatly reliſhed the eaſe and quiet, and ſecurity, and impartiality in the adminiſtration of juſtice, which they had experienced during the ten years that the Engliſh laws had been eſtabliſhed in the province. They dreaded a return to their former ſtate of ſubjection to the officer of government, and to their own nobleſſe and ſeigniors, under which they had laboured in the time of the French government. Amongſt other parts of the former French law, which they ſuppoſed to be revived in the province by this clauſe, they reckoned the laws relating to the manner of raiſing the militia: inſomuch that, ſoon after the Quebeck-act was known in the province, a great number of very young men entered haſtily into the married ſtate, on purpoſe to avoid being compelled to ſerve in

the militia; from which obligation, it ſeems, by the laws which were obſerved in the province in the time of the French government, married men were exempted. And thus the revival of the French laws in all matters of property and civil rights, (which one would, at firſt ſight, have thought would have been agreeable to the Canadians,) has occaſioned a great alarm and terrour throughout the province.

Of the effect of the Quebeck-act with reſpect to the legiſlature of the province.

In the laſt place, we muſt conſider the legiſlature eſtabliſhed in the province of Quebeck; which is a council conſiſting of 23 members, partly proteſtants and partly Roman-catholicks, appointed by the king, and removeable at his pleaſure, or even at the pleaſure of the governour, in caſe his Majeſty ſhall pleaſe to delegate to him the power of ſuſpending and removing them, there being no clauſe in the Quebeck-act to prevent his doing ſo. Now, this meaſure is in ſome degree diſagreeable to the Canadians, more eſpecially as it is accompanied with an allowance of a ſalary of £.100 a year to each of the ſaid 23 counſellors, which the Canadians apprehend they ſhall ultimately be obliged to pay. Otherwiſe it muſt be confeſſed, that the bulk of the Canadian freeholders in the province, (though they are very much attached to the Engliſh laws, or have been greatly delighted with that eaſe and freedom which they have enjoyed ſince thoſe laws were

were introduced in the province, and which they conſequently aſcribe to the introduction of them, yet) are not very ſollicitous about the conſtitution of the body of men in whom the power of making laws ſhall be veſted. Only I believe, they would chuſe it ſhould be compoſed of Engliſhmen rather than Frenchmen, as they eſteem the former to be more moderate and equitable, and alſo wiſer, and better acquainted with the nature of government, than the latter. But they are not very deſirous of having an aſſembly of their own chuſing veſted with this authority rather than a council nominated by the king: and for this plain reaſon, that they have not much reflected on the ſubject. I ſpeak of them, as they were about ſeven years ago. For it is not unlikely that, by this time, they may have been inſtructed in the great advantages of an elective aſſembly by the Engliſh Americans, who have invaded the province, and by the ingenious and diligent emiſſaries, whom the ſaid Engliſh Americans had ſent into the province, before they ventured to invade it, to prepare the Canadians to admit them into it as their friends and deliverers, inſtead of oppoſing them as their enemies: ſo, that it is poſſible they may now be diſpoſed to prefer the Engliſh mode of government by an aſſembly, to the French mode of government by a *conſeil ſupérieur*, or a legiſlative council. And even ſeven years ago, when the bulk of the Canadian freeholders were (thro' their

their ignorance) pretty indifferent, whether they were governed by the one legiſlature or the other, there were ſeveral Frenchmen in the towns of Quebeck and Montreal, amongſt the lawyers and notaries, and merchants, and other people in trade there, who preferred the Engliſh mode of government, by an aſſembly choſen by the people, to the government of a legiſlative council, provided that Roman-catholicks ſhould not be excluded from ſitting in ſuch aſſembly. In ſhort, almoſt all thoſe perſons amongſt the Canadians, who knew what an aſſembly was, and had at all conſidered the ſubject of government, did, even at that time, prefer an aſſembly to a legiſlative council, provided they could be admitted to have ſeats in the aſſembly, though the bulk of the freeholders of the province were, from their ignorance, rather indifferent about the matter. *Ignoti nulla cupido.* See the Account of the Proceedings, &c. in pages 171, 172,---179.

But this clauſe in the Quebeck-act, by which the whole power of making laws is put into the hands of a council of 23 perſons nominated by the crown, has greatly ſhocked the Engliſh inhabitants of the province; who, from their conſiderable numbers, (having been found, by an enumeration made ſince the Quebeck-act, to be no leſs than 3000 perſons) and from their carrying on three quarters of the trade of the province, and the great influence they have over the bulk of the Canadian freeholders,

holders, who conſider them as their friends and protectors, are in truth the moſt important and conſiderable body of people in the province. Now, this reſpectable part of the inhabitants of the province are full of indignation at the Quebeck-act for depriving them of their hopes of being governed by an aſſembly of the people, in purſuance of the king's promiſe to them in the proclamation of October, 1763, which they now conſider as never likely to be accompliſhed. And experience has ſhewn, that it was not agreeable to good policy, any more than to juſtice, to adopt a meaſure that was likely ſo highly to diſguſt them.

And the bad policy of this meaſure muſt appear in the ſtronger light, when we reflect that ſome of the leading members of this reſpectable, and, I may ſay, formidable, body of Engliſh ſettlers in the province, had, before the paſſing of the Quebeck-bill, declared a willingneſs to acquieſce in the eſtabliſhment of a legiſlative council in the province *for a few years only*, provided it was conſtituted in the manner ſet forth in the draught of an act of parliament for that purpoſe, which is recited in the *Account of the proceedings*, &c. from page 50 to page 74, ſo as to conſiſt of thirty-one members, who ſhould be independent of the governour, though not of the king, and who ſhould be ſubject to certain checks and reſtrictions as to their legiſlative proceedings, which were likely to prevent

any

any great abuſes of their power. It is really ſurprizing, that, when ſuch a plan of a legiſlative council (which is far enough from being equal, in point of freedom, to an aſſembly of the people!) was known to be likely to be acquieſced in by thoſe inhabitants of the province who were moſt deſirous of having an aſſembly, the government ſhould have thought fit to reject it in favour of a legiſlative council of ſo very dependent a conſtitution as that which is eſtabliſhed by the Quebeck-act; in which the number of members, inſtead of being fixed at thirty-one, is variable at the pleaſure of the crown between the leſſer numbers of twenty-three and ſeventeen; and in which all the members may be papiſts, if his Majeſty ſhall ſo think fit; and none of them are required to have any landed property in the province; and all of them have penſions, or ſalaries, from the crown, of £. 100 a year each; and all of them may (for aught the act ſays to the contrary,) be removed, or ſuſpended, not only by the king, but alſo by the governour, if his Majeſty ſhall pleaſe to delegate to him his own power of ſo removing and ſuſpending them; and that they ſhould have eſtabliſhed this council, with all theſe objections to it, not for a few years only, but indefinitely, ſo as to remove from his Majeſty's ſubjects in that province all hopes of ſeeing an aſſembly erected in the province in purſuance of the royal promiſe in the proclamation

tion of October, 1763. It ſurely muſt have been the intention of the patrons of this act to keep the province of Quebeck, (which it at the ſame time extends over more than half North America,) in a very great degree of ſubjection to the crown!

It is worth while to obſerve the extent of the powers of this council. They may, with the king's ſubſequent conſent, make and unmake all ſorts of laws, excepting laws of taxation. They may aboliſh the Engliſh criminal law, which is eſtabliſhed in the province by another clauſe in this act of parliament, but made ſubject to ſuch alterations as the Governour and this council ſhall cauſe to be made therein; and they may introduce the French criminal law in its ſtead: ---- they may eſtabliſh the puniſhments of ſlitting the noſe, branding on the cheek, or breaking on the wheel, or any other puniſhments they ſhall think fit: --- they may eſtabliſh the Roman-catholick religion more compleatly than the act itſelf has done, by paſſing an ordinance to oblige the proteſtant as well as the popiſh inhabitants to pay the Romiſh prieſts the tythes: ---- they may even make penal laws againſt the proteſtants, and eſtabliſh the writ *de Hæretico comburendo*: ---- they may eſtabliſh letters *de cachet*, or the power of arbitrary impriſonment, by an expreſs law, under pretence of providing for the publick ſafety, and checking and defeating the treacherous practices of

conſpirators and ſpies. All theſe things they may do by virtue of theſe few ſignificant words in the ſaid act of parliament, to wit, "*which council, ſo appointed and nominated, or the major part thereof, ſhall have power and authority to make ordinances for the peace, welfare, and good government, of the ſaid province, with the conſent of his Majeſty's governour, or, in his abſence, of the Lieutenant-governour, or commander in chief for the time being;*" in which clauſe the uſual reſtriction which is inſerted in all the American charters and commiſſions to Governours, to wit, *that the ſaid ordinances ſhall not be repugnant to the laws of England*, is not inſerted.

I readily allow, that it is not probable that the governour and the ſaid legiſlative council ſhould make ſuch miſchievous ordinances as thoſe juſt now mentioned: and I am confident that, if they did make ſuch, his Majeſty would diſallow them by his orders in his privy council. But this is but a precarious ſituation for Britiſh ſubjects to be placed in, who have been uſed to live under a government in which it is not only improbable, but impoſſible, that ſuch laws ſhould be made for them by the crown, or any perſons appointed by it, without the conſent of their own repreſentatives in parliament. It is only this latter ſituation that can properly be conſidered as legal and Britiſh freedom, and as what has been promiſed to his Majeſty's ſubjects reſiding in the province

of

of Quebeck by his royal proclamation of October, 1763. If, therefore, that province is to be governed by a legiſlative council, the legiſlative powers delegated to that council by the Britiſh parliament, ought to be reſtrained in ſuch a manner that they ſhall not be able to make any ſuch miſchievous laws as thoſe above-mentioned, or to aboliſh, or in any degree abridge, the laws concerning the writ of *Habeas corpus*, and the protection of perſonal liberty, and the trial by jury, or any other of thoſe important privileges of Engliſhmen which may juſtly be conſidered as having been granted to the inhabitants of the province by the aforeſaid proclamation by the aſſurance therein given them *of the enjoyment of the benefit of the laws of England.* And for this purpoſe ſome ſuch reſtrictive proviſoes as thoſe mentioned above in pages 232, 233, 234, ought to be inſerted in the act which confers on them their legiſlative authority.

Till ſuch reſtrictions are made to the legiſlative powers delegated by the late act to the governour and council of Quebeck, it may juſtly be compared to the ſtatute of the 31ſt year of the reign of king Henry VIIIth, cap. 8, which gave to the king's proclamations the authority of acts of parliament. For it really goes beyond that ſtatute in the power it veſts in theſe ſervants of the crown. For, according to that ſtatute, the king could not, by his proclama-

tion, repeal any of the laws then in being, nor make any law affecting men's inheritances, offices, or poſſeſſions, nor make any new capital crime, except in caſes of hereſy: and the puniſhments, by which obedience to his proclamations was to be enforced, were to be only impriſonment and fines, which were to be inflicted in purſuance of judgements to be paſſed upon informations brought before certain great officers of ſtate enumerated in the act, or at leaſt before half the ſaid officers, in the Star-chamber. Whereas by the late Quebeck-act the power of making and repealing all ſorts of laws in the ſaid province, and enforcing obedience to them by all ſorts of puniſhments, is veſted in the governour and council of the province, with the ſubſequent aſſent, or allowance, of the king. That ſtatute of Henry VIII. was repealed, with many other ſevere and oppreſſive ſtatutes, in the firſt year of the reign of king Edward VI. under the adminiſtration of the good duke of Somerſet, that young king's uncle, who was for a few years protector of the kingdom, and by his wiſdom and zeal in the reformation of religion, and the eſtabliſhment of civil liberty, during the continuance of his power, deſerved and obtained the eſteem and affections of the Engliſh nation in a very high degree. May ſome miniſter of ſtate, of ſimilar principles with that good man, in like manner recommend himſelf to the good affections of his fellow-ſubjects both

in

in England and America, by procuring the repeal of the Quebeck-act!

Hitherto I have conſidered the Quebeck-act only as it affects his Majeſty's ſubjects, both French and Engliſh, in that province itſelf; and I have endeavoured to ſhew that, in that view only, it is highly expedient to repeal it. But, if we conſider the effect of it with reſpect to the other American colonies, the neceſſity of repealing it will appear ſtill ſtronger. For it ſeems to have alarmed thoſe colonies more than any other act of parliament that has yet been paſſed, and, together with the Boſton-charter act, to have been the principal cauſe of the preſent univerſal reſiſtance in thoſe colonies to the authority of the Britiſh parliament. The Boſton-charter act has made them conſider all the privileges granted them, both by that and all the other charters in America, as precarious and uncertain; ſince the ſaid charters are liable thus to be altered, taken away, or new-modelled, at the pleaſure of the Britiſh parliament, without a hearing of the parties, or a charge and proof of the miſuſer of the powers and privileges contained in them. And the Quebeck-act has carried the alarm ſtill further, and made the American colonies tremble even for their aſſemblies, and ſuſpect that the Britiſh parliament, if they ſhould ſubmit to its authority, would totally annihilate thoſe popular legiſlatures, and eſtabliſh

legiſlative

legiſlative councils in their ſtead, as they have done in the province of Quebeck. This and the apprehenſion, that their back-ſettlements would be invaded by a popiſh army from Canada, and that the principal deſign of the Quebeck-act was to enable the king to raiſe ſuch an army there, and (by means of the influence of the Romiſh prieſts and the nobleſſe,) to keep the Canadians in a diſpoſition to enliſt in it, and to be ſo employed againſt them, ſeem to have compleated the deſtruction of all their confidence in the Britiſh parliament, and confirmed them in their reſolution of reſiſting its authority. For otherwiſe it is hardly to be ſuppoſed, that the accounts which we have repeatedly received from perſons of character and experience in America, that a great number of perſons of weight and property there were friends to the authority of the Britiſh parliament, and would, when properly ſupported by a reſpectable body of troops, declare themſelves to be ſo, ſhould prove ſo intirely falſe and groundleſs. It is hardly poſſible to conceive that the perſons, who gave theſe accounts, ſhould have been ſo intirely miſtaken in their judgements and opinions of the ſentiments of the Americans: and ſtill leſs ought we to imagine that they meant to impoſe upon government, and bring on the preſent moſt deſtructive war. We muſt conclude, therefore, that their accounts of the ſentiments of the Americans were true in the year 1772, and that *till that time* there were many perſons in America, who

(notwithſtanding

(notwithſtanding the claim of the Britiſh parliament to the right of impoſing taxes on its inhabitants, and their exerciſe of that right in the continuance of the trifling duty upon tea,) were friends to Great-Britain, and averſe to any meaſures of reſiſtance to the parliament's authority; though they were not diſpoſed expreſsly to acknowledge its right to tax them. But, upon the paſſing of the Boſton-charter act and the Quebeck-act in the year 1774, (by the former of which their charter-rights were rendered precarious, and by the latter they were induced to ſuſpect that even their aſſemblies would ſoon be taken from them, if the authority of parliament was allowed to be legally binding on them,) it ſeems probable that theſe friends of government, or Great-Britain, thought it neceſſary to change their conduct, and go over to the more violent party, who were diſpoſed to reſiſt the authority of parliament by force of arms. And it is natural to ſuppoſe, that the moſt loyal of theſe friends to Great-Britain have reaſoned, ever ſince that melancholy æra in the politicks of Great-Britain, in ſome ſuch manner as the following:

"We have hitherto been engaged in a diſ-
"pute with our mother country, not concern-
"ing the exiſtence of our aſſemblies, nor the
"free and full exerciſe of their legiſlative
"powers for the benefit of their reſpective
"colonies, but only concerning their ſub-
"ordination to the ſupreme legiſlature of the
"whole

" whole Britiſh empire, the Parliament of
" Great-Britain. The members of that great
" legiſlature have inſiſted, that the aſſemblies
" of the American provinces are of the na-
" ture of the common-councils of the corpo-
" ration-towns in the iſland, or kingdom, of
" Great-Britain, which have a local and infe-
" riour ſpecies of legiſlative authority, or, as
" it is expreſſed in the American charters and
" commiſſions, an authority to make laws for
" their own good government, not repugnant
" to the general laws of England, and which
" are known by the name of bye-laws; but
" without interfering in the leaſt with the
" ſuperiour authority of the parliament, which
" is the ſupream and general legiſlature of the
" whole nation, and has power to bind all the
" ſubjects of the crown in every part of its
" dominions. And we, the ſober and loyal
" party in America, (whom our briſker coun-
" trymen have ſtigmatized with the name of
" *Tories*, on account of our attachment to
" Great-Britain,) being convinced by the force
" of the reaſons alledged in that behalf, and
" deſirous of maintaining our union with Great-
" Britain in the moſt perfect manner, have
" acknowledged the juſtice of this pretenſion,
" and have declared ourſelves to be bound in
" duty, and willing in fact, to obey the ſu-
" pream legiſlative authority of the parlia-
" ment; though we have wiſhed at the ſame
" time, that they would forbear to uſe it for

" the

" the purpoſe of impoſing taxes on us, and
" leave that ſingle and delicate buſineſs to be
" tranſacted by our own aſſemblies, as it had
" always uſed to be till the unfortunate ſtamp-
" act in 1764. Theſe have been our mode-
" rate and friendly ſentiments towards Great-
" Britain, though a more clamorous and vio-
" lent party among us has inflamed the people
" with notions of a very different kind, and
" has led away a majority in our aſſemblies to
" declare, that they are not ſubordinate in
" any reſpect to the Britiſh parliament, but
" perfectly co-ordinate with it, and equal to
" it in authority within the limits of their re-
" ſpective provinces. Theſe pretenſions we
" are forced to diſapprove, and have, from
" time to time, expreſſed our diſapprobation
" of them, as far as the over-bearing ſpirit of
" the other party, (who have engaged the com-
" mon people on their ſide,) has permitted us
" to do ſo; becauſe we were of opinion, that
" theſe high pretenſions were not only void
" of foundation in truth and reaſon, but that
" they were contrary likewiſe to good policy,
" as they have an immediate tendency to
" ſplit the dominions of the crown of Great-
" Britain into ſo many ſeparate and indepen-
" dant ſtates, and deſtroy that happy union
" and harmony that has hitherto ſubſiſted be-
" tween them. But we had never yet ima-
" gined, that Great-Britain had begun to envy us
" the enjoyment of our aſſemblies themſelves,

" and to wiſh to have us governed intirely by
" officers of the crown, without any ſhare in
" the appointment of the legiſlatures of our
" reſpective provinces. But now we have
" reaſon to entertain this new and alarming
" ſuſpicion. For an act of parliament is lately
" paſſed, in direct oppoſition to the king's
" proclamation of October 1763, (which we
" had always looked upon as a ſacred inſtru-
" ment, that was binding on the king and
" nation, and could not be repealed without
" a breach of the publick faith, but which
" this act has boldly reſcinded and annulled
" by expreſs words;) an act of parliament is
" paſſed, to *eſtabliſh*, inſtead of *tolerating*, the
" popiſh religion in the province of Quebeck;
" and to revive the French laws there in all
" matters of property and civil rights; and,
" conſequently, to reſume, from both the
" French and Engliſh inhabitants of the pro-
" vince, the grant that had been made to them
" by the ſaid proclamation, of the Engliſh
" laws concerning the writ of *Habeas corpus*,
" and the enjoyment of perſonal liberty, and
" concerning the trial by jury in all civil actions,
" and of divers other beneficial laws of Eng-
" land;---- and to eſtabliſh, inſtead of an
" aſſembly, (which had been promiſed them
" by the ſaid proclamation as ſoon as the ſtate
" and circumſtances of the ſaid province would
" permit,) a legiſlative council compoſed of
" perſons nominated by the crown; and which

" is

" is not eſtabliſhed for only a ſmall number of
" years, but is deſigned (for aught that appears
" to the contrary in the act,) to be the perma-
" nent mode of government for that province to
" all future generations;---and laſtly, (which is
" a matter that concerns us more nearly than all
" the reſt,) to enlarge the boundaries of the pro-
" vince of Quebeck ſo as to take in the five great
" lakes and all the immenſe and very fruitful
" country contained between them and the ri-
" vers Ohio and Miſſiſippi, and which lies at the
" back of our provinces; with a view, as it
" ſhould ſeem, that this new and favourite
" mode of government, together with the Ro-
" man-catholick religion (now alſo, to all ap-
" pearance, become an object of favour with
" Great-Britain,) ſhould prevail throughout all
" that vaſt country. What then can we con-
" clude from ſuch an act of parliament, (the
" paſſing of which would ten years ago have
" been thought an impoſſible event;) but
" that Great-Britain is now governed by the
" counſels of a ſet of men, who, going far
" beyond the late Mr. Grenville's ſentiments
" in their plan of controuling theſe provinces,
" intend not barely to reduce our aſſemblies
" to their antient and conſtitutional condition
" of inferiour legiſlatures, ſubordinate to the
" ſupream authority of the Britiſh parliament,
" but abſolutely to deprive us of them, and
" govern us by legiſlative councils appointed by
" the crown, in imitation of that which they

" have juſt now eſtabliſhed in this immenſe
" new province, which they have erected at
" the back of our ſettlements?---- And if
" this be their deſign, it behoves us Engliſh
" Americans, if we deſerve the name of Eng-
" liſhmen, and ſet any value on the liberties
" we now enjoy under the protection of our
" aſſemblies, to unite with heart and hand in
" defence of them. In ſuch a cauſe we are
" ready to venture any thing, even life itſelf,
" the continuance of which cannot be plea-
" ſant to us after the extinction of our liberty.
" We muſt, therefore, now at laſt give up the
" pleaſing hopes which we, the ſober and
" loyal party in America, (who have acknow-
" ledged the authority of the Britiſh parlia-
" ment over us,) have hitherto entertained of
" ſeeing an amicable concluſion of our pre-
" ſent diſputes with our mother-country, ſince
" ſhe has ſo far forgot her parental affection
" towards us as to meditate to reduce us to a
" ſtate of political ſlavery: And we muſt hence-
" forwards unite ourſelves with our more vio-
" lent brethren to carry on their ſchemes of
" independance on Great-Britain; ſchemes
" which *they* have adopted from ambition, but
" which we ſhall accede to from the humbler,
" but not leſs cogent, motive of neceſſity, from
" a ſenſe of the impoſſibility of preſerving our
" former degree of liberty without it, after
" the diſpoſition which Great-Britain has ma-
" niſeſted with reſpect to us by this ſurprizing
" act for the government of Quebeck."

Such

Such ſeem to have been the ſentiments of the moſt moderate Engliſh Americans upon the paſſing the late Quebeck bill; and, in conſequence of them, the reſiſtance to parliamentary authority is become almoſt univerſal, hardly any perſons among them having, ſince that time, appeared to have any inclination to acknowledge and ſupport that authority, except the very officers of government in America, who hold lucrative employments there at the pleaſure of the crown, and a few of the clergy of the church of England, who are eagerly deſirous of having a proteſtant biſhop ſent to America, and who, probably, have no hope of ſeeing that favourite meaſure accompliſhed without the interpoſition of the authority of the Britiſh parliament. This being the ſtate of things, it ſeems evident, that all hopes of reconciliation between Great-Britain and her colonies, upon any laſting or cordial terms, are at an end, unleſs this act for regulating the government of the province of Quebeck ſhall be repealed. And, therefore, if we wiſh to retain the colonies in America, as members, or parts, of the dominions of the crown of Great-Britain, in any capacity, (either as ſubordinate civil ſocieties, or corporations, ſubject to the controul of the Britiſh parliament, or as ſeparate ſtates of fellow-ſubjects of the ſame king, having legiſlatures of their own co-ordinate with the parliament, or legiſlature of Great-Britain,) it ſeems

to

to be a meaſure, not merely of prudence, or expedience, or preferable choice, but of abſolute neceſſity, to repeal this moſt obnoxious act of parliament, and paſs another in its ſtead, which ſhall be more agreeable to the promiſes contained in the royal proclamation of October 1763, and the general principles of the Britiſh conſtitution.

Of the Power of impoſing Taxes in the Province of Quebeck, ſince the late Act for regulating its Government.

THOUGH the act for regulating the government of the province of Quebeck expreſsly excepts from the power of making laws, which it delegates to the Governour and council to be eſtabliſhed in it, the power of laying any taxes, or duties, within it; and though the Britiſh parliament, at the ſame time that it paſſed this act for the government of that province, paſſed another act for impoſing certain taxes and duties on ſpirituous liquors imported into it, (which I believe to be both moderate and judicious, and againſt which no complaints have been made in the province,); yet there is ſome reaſon to apprehend that the ſaid act for regulating the government of the province of Quebeck may one day or other be conſidered as having veſted the power of impoſing taxes on the

the inhabitants of that province in the crown alone, without the concurrence of the parliament. If this ſhould be the effect of the ſaid act, I readily allow that it was done inadvertently, and that it is probable the promoters of the act had no ſuch effect in view at the time of paſſing it, but intended to reſerve the power of impoſing taxes in that province to the king and parliament conjointly. But ſtill I think there is reaſon to apprehend that the act may be conſidered as having this operation. My reaſons for thinking ſo are as follows.

The royal proclamation of October, 1763, related equally to all the four new governments which were then going to be erected in the countries that had been ceded to the crown of Great-Britain by the definitive treaty of peace concluded at Paris in the preceding month of February. Theſe governments were thoſe of Quebec, Eaſt-Florida, Weſt-Florida, and Grenada. And the ſame promiſes, of being immediately governed according to the Engliſh law, and of having the Engliſh form of colony-government, by a Governour, council, and aſſembly, eſtabliſhed in them, as ſoon as their ſituation and circumſtances would admit thereof, were made to them all. In the month of July in the following year 1764, the King iſſued letters patent under the great ſeal of Great-Britain, reciting, "That in Barbadoes, "and all the Britiſh Leeward iſlands, there

"was

" was a duty of four and a half per cent. paid " upon the export of goods," and then proceeding to impoſe the like duty in the iſland of Grenada in theſe words, " Whereas it is " reaſonable and expedient, and of importance " to our other ſugar colonies, that the like " duty ſhould take place in our ſaid iſland of " Grenada, we have thought fit, and our royal " will and pleaſure is, and we do hereby, by " virtue of our prerogative royal, order, direct, " and appoint, that an impoſt, or cuſtom, of " four and a half per cent. in ſpecie ſhall, " from and after the 29th of September next " enſuing the date of theſe preſents, be raiſed " and paid for and upon all dead commodities, " of the growth and produce of our ſaid iſland " of Grenada, which ſhall be ſhipped from " the ſame, in lieu of all cuſtoms and import- " duties hitherto collected upon goods imported " and exported, into and out of, the ſaid iſland, " under the authority of his Moſt Chriſtian " Majeſty; and that the ſame ſhall be col- " lected." This duty of four and a half per cent. was accordingly collected for ſome years in the iſland of Grenada by virtue of theſe letters patent, without either an act of the Britiſh parliament or an act of the Governour, council, and aſſembly of Grenada, to confirm them, notwithſtanding an aſſembly was called in that iſland, and ſat to do buſineſs in it, in the year 1765. At laſt, in the year 1773, one Mr. Alexander Campbell, a natural-born ſubject of Great-Britain,

Britain, who had purchaſed a plantation in the iſland of Grenada in the month of March, 1763, and who had paid this duty of four and a half per cent. upon ſome ſugars which he had exported from it, brought an action againſt Mr. Hall, the collector of the cuſtoms to whom he had paid it, to compel him to return it to him, as being money had and received by the ſaid defendant Hall to his, the plaintiff's, uſe, it having been paid by the ſaid plaintiff in purſuance of the ſaid letters patent of July, 1764, which he contended to be illegal and void. The defendant Hall reſted his defence upon the validity of the ſaid letters patent; and the jury found a ſpecial verdict, ſtating the whole matter; of which the ſubſtance has been here related. And this ſpecial verdict was ſolemnly argued at the bar of the court of King's-bench, and judgement was given on it by the judges of that court on the 28th day of November, 1774, in favour of the plaintiff Campbell. Lord Mansfield, the chief juſtice of the ſaid court, delivered the opinion of the court upon that occaſion; which was to the following purport. He ſaid, that the general queſtion upon the ſpecial verdict was this, to wit, "Whether the letters patent of July, 1764, are good and valid to aboliſh the French duties, and, in lieu thereof, to impoſe the ſaid duty of four and an half per cent. which is paid in all the Britiſh Leeward iſlands."

That upon this queſtion the counſel for the defendant had contended that the ſaid letters patent were void, upon two diſtinct grounds.

In the firſt place they contended, that, if the king had iſſued theſe letters patent before his aforeſaid proclamation of October, 1763, (in which he promiſed the inhabitants of the ſaid iſland the enjoyment of the benefit of the laws of England and the Engliſh mode of government by a Governour, council, and aſſembly,) they would nevertheleſs have been illegal and void; for that the king can at no time exerciſe ſuch a legiſlative authority over a conquered country.

And in the ſecond place they ſaid, that, if the king had had ſufficient authority before the iſſuing of the ſaid proclamation of October, 1763, to do ſuch a legiſlative act, yet that by the ſaid proclamation of October, 1763, he had diveſted himſelf of that authority.

Lord Mansfield declared that all the judges of the court were of opinion with the plaintiff's counſel upon this latter point, to wit, that the king had by the ſaid proclamation of October, 1763, diveſted himſelf of this legiſlative power; and therefore they gave judgement for the plaintiff. But he declared it to be clearly his own opinion, and did not intimate that any of the other judges differed from him upon that point,

point, " that in the interval of time between the ceſſion of the iſland of Grenada to the crown of Great-Britain by the treaty of peace in February, 1763, and the proclamation in October, 1763, the king had a power of impoſing the ſaid duty of four and a half per cent. upon goods exported from the iſland of Grenada by virtue of his letters patent under the great ſeal; and conſequently that, if the ſaid letters patent for impoſing the ſaid duty had been paſſed before the ſaid proclamation of October, 1763, inſtead of after it, they would have been legal and valid, and the judgement in that action muſt have been for the defendant.

Amongſt other arguments, or rather authorities, in ſupport of this royal prerogative of impoſing taxes on the inhabitants of conquered countries, Lord Mansfield, in delivering the judgement of the court on the aforeſaid occaſion, mentioned the opinion of Sir Philip Yorke, (who was afterwards Lord Chancellor Hardwicke,) and Sir Clement Wearg, when they were attorney and ſollicitor general, upon a caſe referred to them by the privy council. This caſe was as follows. In the year 1722, the aſſembly of Jamaica being refractory, it was referred to Sir Philip Yorke and Sir Clement Wearg to conſider what could be done if the aſſembly ſhould continue to with-hold all the uſual ſupplies. Upon this they reported as follows: " That, if Jamaica was ſtill to

" be conſidered as a conquered iſland, the king " had a right to lay taxes upon the inhabitants: " but, if it was to be conſidered in the ſame " light as the other colonies, no tax could be " impoſed upon the inhabitants but by an " aſſembly of the iſland, or by an act of par- " liament." This opinion Lord Mansfield laid great ſtreſs on, and adopted.

Now, if this opinion is true, I apprehend that it will follow that it is at this time lawful for the king by his letters patent under the great ſeal to impoſe taxes on the inhabitants of the province of Quebeck, by virtue of that clauſe in the late Quebeck-act, in which it is enacted, " *that the ſaid proclamation* [of October, 1763], *ſo far as the ſame relates to the ſaid province of Quebeck, and the commiſſion, &c. be revoked, annulled, and made void, from and after the firſt day of May, one thouſand, ſeven hundred, and ſeventy-five.*" For, ſince this proclamation is hereby revoked with reſpect to the province of Quebeck, it ſeems naturally to follow that the king's power with reſpect to that province muſt, in all caſes not provided for by the ſaid act, be the ſame as it was before the ſaid proclamation was publiſhed, and conſequently that it will extend to the impoſition of taxes upon the inhabitants of that province, there being no proviſion in the ſaid act concerning the perſons in whom the power of laying taxes ſhall be veſted, but only an exception

ception of it in the clauſe which delegates the power of making laws to the Governour and council of the province. And thus the late parliament will, by the late Quebeck-act, have, *inadvertently and by neceſſary inference*, conveyed to the crown alone a power of taxing all the inhabitants of the province of Quebeck, (which they alſo extended over more than half North-America,) at the ſame time as they, *deliberately and expreſsly*, conveyed to the Governour and council of the ſaid province a power of making, with the ſubſequent aſſent of the crown, all ſorts of laws in the ſaid province, excepting ſuch as relate to the impoſition of taxes. This is one of many inſtances of the looſe and negligent manner in which that moſt important act is drawn up.

Now, ſince this is the uſe which may one day be made of the aforeſaid clauſe in the Quebeck-act, (which revokes the king's proclamation of October, 1763,) by means of the aforeſaid opinion of Lord Mansfield upon the firſt point that was inſiſted on by the plaintiff's counſel in the aforeſaid caſe of Campbell and Hall, it ſeems reaſonable, in caſe the ſaid Quebeck-act ſhould not be repealed, but only amended, and the aforeſaid proclamation of October, 1763, ſhould not be revived in the ſaid amending act, I ſay, it ſeems reaſonable in ſuch caſe to guard againſt this concluſion by an expreſs clauſe that ſhall veſt the power

of

of impoſing taxes on the inhabitants of the the ſaid province, until an aſſembly of people ſhall be eſtabliſhed in it, in the parliament of Great-Britain. With this view it would be proper to correct the ſecond ſection of the draught of an act of parliament for eſtabliſhing a legiſlative council in the province of Quebeck for only ſeven years, which is recited in the *Account of the Proceedings, &c.* from page 50 to page 74, (ſuppoſing that draught were to be adopted as part of an act of parliament for amending the preſent Quebeck-act,) in the following manner.

II. PROVIDED always, and IT IS HEREBY FURTHER ENACTED, that none of the ſaid laws, ſtatutes, or ordinances, ſhall in any degree tend to the impoſing any duties, or taxes, on the inhabitants of the ſaid province; and that, ſo far as any of the ſaid laws, ſtatutes, or ordinances, ſhall have any ſuch tendency, they ſhall be utterly void and of no effect or authority whatſoever: and that, during the continuance of this preſent act, no duties, or taxes of any kind, ſhall be impoſed on the inhabitants of the ſaid province by any other authority than that of the parliament of Great-Britain. See the *Account of the Proceedings, &c.* page 63.

But, as the Quebeck-act is liable to ſuch a number of very capital objections in almoſt every part of it, it is to be hoped that, when it

next

next undergoes the conſideration of parliament, it will not be amended, but totally repealed, and the king's proclamation of October, 1763, again revived with reſpect to that province, with ſuch explanations and corrections as ſhall be judged neceſſary for the domeſtick happineſs and ſatisfaction of the Canadians; agreeably to what has been ſaid above in pages 436, ---- 446. For there never, as I believe, was a written compoſition of any kind, that gave a juſter handle to the application of Martial's ſatirical diſtich.

Emendare tuos, O Feſcennine, libellos
Non multæ poſſunt, *Una litura* poteſt.

A Propoſal for a Reconciliation with the revolted Provinces of North-America, without exempting them from the Authority of the Britiſh Parliament.

IN the firſt place, to repeal the Quebeck-act, and thereby re-eſtabliſh the king's proclamation of October, 1763, with reſpect to the province of Quebeck, and reduce the extent of the ſaid province to what it was before the late Quebeck-act; or, perhaps, (if it ſhall be thought neceſſary,

neceſſary, upon a full inquiry into the matter by the teſtimony of ſea-officers acquainted with Newfoundland and the gulf of Saint Lawrence, and the fiſheries and trade carried on in thoſe parts, and by the teſtimony of merchants acquainted with the ſame ſubjects,) to enlarge the former extent of the province of Quebeck, as ſettled by the proclamation of October, 1763, by the addition of the coaſt of Labrador, which by the ſaid proclamation were made part of the government of Newfoundland: but by no means to put all the interiour part of North-America into the province of Quebeck.

Secondly, After thus repealing the Quebeck-act, and reviving the king's proclamation of October, 1763, and reducing the province of Quebeck to a reaſonable and moderate extent, capable of being governed by an aſſembly in purſuance of the promiſe in the ſaid royal proclamation, To aſcertain the laws of the province. This ſhould be done by expreſsly mentioning and confirming the petition of right, the *habeas corpus* act, the bill, or declaration, of rights in the firſt year of king William and queen Mary, and perhaps a few other ſtatutes that are ſingularly beneficial and favourable to the liberty of the ſubject, and then by confirming, in general terms, the reſt of the laws of England, both criminal and civil, excepting the penal laws againſt the exerciſe of the popiſh religion, which ſhould be declared

declared to be (what they have always been underſtood to be,) utterly null and void with reſpect to that province, and excepting alſo the laws relating to the tenure of land, the manner of conveying it, and the laws of dower and inheritance, at leaſt with reſpect to the children of marriages already contracted, or which ſhall be contracted before a given future day, and declaring that upon theſe ſubjects the former French laws of the province ſhould be in force.

But the laws of England which diſqualify papiſts from holding places of truſt and profit, ought ſtill to be continued in the province, though the penal laws ſhould be aboliſhed; the former laws being not laws of perſecution, but of ſelf-defence. Yet the king might, if he pleaſed, extend his bounty to thoſe people who ſigned the French petition, and to ſuch other perſons of the Roman-Catholick religion as he thought fit, by granting them penſions.

Alſo it would be proper to aboliſh the ſeigneurial juriſdictions in Canada, for the ſatiſfaction of the great body of the freeholders of the province. If this cannot be done conſiſtently with juſtice and the terms of the capitulation granted by Sir Jeffery Amherſt in September, 1760, without giving the ſeigniors a pecuniary compenſation for the loſs of theſe juriſdictions, (though I incline to think it might,) ſuch pecuniary compenſations ought to be

given them. The expence of a week's extraordinaries to the army at Boſton would be more than ſufficient to make theſe compenſations in a large and ample manner.

Thirdly, Having thus aſcertained the laws of the province of Quebeck, it would be proper to provide for the convenient adminiſtration of juſtice in it, either by adopting the plan ſet forth above in pages 343,---359, or ſome other that ſhall be thought fitter for the purpoſe.

Fourthly, To provide a competent legiſlature for the province of Quebeck. The beſt legiſlature that could be provided for it, would, as I believe, be a proteſtant aſſembly choſen by the freeholders of the country, whether Proteſtants or Roman-Catholicks. The next beſt, I ſhould be inclined to think, would be a legiſlative council conſiſting of proteſtants only, ſuch as is propoſed in the draught of an act of parliament contained in the *Account of the Proceedings, &c.* pages 50---74, with the corrections herein above mentioned in pages 232, 233, 234, and 486, to be eſtabliſhed for only ſeven years; in which all the members ſhould be made independent of the Governour; ſo as to be neither removeable nor ſuſpendible by him upon any occaſion whatſoever, though they might be removed by the king by his order in council. They ſhould be thirty-one in number, or perhaps more; and ſhould all ſign the

the ordinances for which they gave their votes; and ſhould be paid forty ſhillings each, every time they attended the meetings of the council, in order to induce them to attend in conſiderable numbers; as the juſtices of the peace in England are intitled to a pecuniary allowance for attending the quarter-ſeſſions of the peace, and the directors of the Eaſt-India company for attending the meetings upon the affairs of the company, and the members of the Houſe of Commons are intitled to wages from their conſtituents for attending parliament, though now they forbear demanding them. But they ſhould receive no general ſalaries from the crown, not depending upon their attendances; as ſuch a practice can tend to nothing but to make them dependant on the crown, and contemptible in the eyes of the people. Next to ſuch a legiſlative council, conſiſting of proteſtants only, a general aſſembly of the people, conſiſting of proteſtants and papiſts indiſcriminately, ſeems to be the moſt proper legiſlature for the province. And to the eſtabliſhment of ſuch an aſſembly but few objections can now be made, ſince the Engliſh ſettlers in the province, on the one hand, have declared that they are willing to acquieſce in the eſtabliſhment of ſuch an aſſembly, and the king and parliament, on the other hand, have, (by paſſing the Quebeck-act and permitting Roman-Catholicks to hold all ſorts of offices, ſeats in the legiſlative council of the province, judicial

offices, and even military commiſſions,) declared that they conſider the old opinion, "that Roman-Catholicks were not fit perſons to be inveſted with authority under the Britiſh government," as ill-grounded with reſpect to the province of Quebeck. For certainly, if there is any hardſhip in excluding papiſts from holding places of truſt and profit in the province, there is a ſtill greater hardſhip in excluding them from being choſen members of an aſſembly of the province.

Fifthly, To repeal the Boſton-charter act; and to paſs a reſolution in both houſes of parliament, that, for the future, no charter of any American colony ſhall be taken away, or altered in any point, by the Britiſh parliament, without, either, on the one hand, a petition for that purpoſe to the two houſes of parliament, or to the king's majeſty, from the aſſembly of ſuch colony, whoſe charter is propoſed to be either taken away or altered, or, on the other hand, a ſuit at law by a writ of *ſcire facias* to repeal the ſaid charter, regularly carried on in the court of Chancery in England, upon a charge of ſome abuſe of the powers of the ſaid charter by the people of ſuch colony, or of ſome other miſdemeanours committed by them, which may be a legal ground of forfeiture of the ſame, and a judgement of forfeiture pronounced in conſequence of ſuch ſuit after a full hearing of the ſame,

and

and alſo a re-hearing in parliament of the charges in the ſaid ſuit and of the proofs brought in ſupport of them, and of the arguments which may be alledged both for and againſt the ſaid colony by counſel, and an approbation and confirmation of ſuch judgement of forfeiture by both houſes of parliament in conſequence of the ſaid re-hearing of the whole matter.

Such a reſolution of the two houſes of parliament would give the Americans a ſtrong moral aſſurance that the privileges granted them by their charters would not be lightly and wantonly altered for the future upon the haſty ſuggeſtions of men little acquainted with their hiſtory and condition, and whoſe notions of government are very different from their own.

Sixthly, To repeal the trial-act, for trying officers or ſoldiers, who ſhall be indicted for murder in the Maſſachuſets bay, in others of the American provinces, or in England. This act, I am perſuaded, was intended only for the purpoſes of juſtice, and to procure a fair trial to the officers and ſoldiers who ſhould happen to be indicted for actions done by them in the courſe of their duty as aſſiſtants to the civil magiſtrate in the execution of the laws, and not to ſcreen them from puniſhment when they were really guilty of murder, or had occaſioned the death of his Majeſty's ſubjects

in

in that province without ſuch juſt and lawful cauſe. And I am further perſuaded that, in fact, it would not ſcreen them from puniſhment, provided the charge was ſupported by proper teſtimony; but that the ſaid juries that ſhould try theſe indictments, whether in England or America, would readily convict ſuch officers and ſoldiers of murder, if they were really guilty of it, and proved to be ſo by ſufficient evidence. But the difficulty of procuring the witneſſes to the facts to come acroſs the Atlantick ocean to give evidence concerning them is ſo great, that it may almoſt be conſidered as unſurmountable; and conſequently this method of trying thoſe offences may be reckoned to be impracticable, notwithſtanding the ſpirit of juſtice and impartiality by which the juries would probably be governed. And for this reaſon the act ought to be repealed. However, as this act is only a temporary one, and will expire of itſelf in two years, it is a matter of much leſs conſequence than the act for altering the charter of the Maſſachuſets bay and the Quebeck-act. Thoſe are the acts which have brought on this civil war, and which, I apprehend, muſt be totally repealed before peace can be reſtored.

Seventhly, To paſs a reſolution of both houſes of parliament, that, for the future, no tax or duty of any kind, ſhall be impoſed by authority of

of the parliament of Great-Britain upon his Majeſty's ſubjects reſiding in thoſe provinces of North America in which aſſemblies of the people are eſtabliſhed, until the ſaid provinces ſhall have been permitted to ſend repreſentatives to the Britiſh parliament, excepting only ſuch taxes or duties, upon goods exported out of, and imported into, the ſaid provinces, as ſhall be thought neceſſary for the regulation of the trade of the ſaid provinces; and that, when ſuch taxes, or duties, ſhall be laid by the Britiſh parliament on any of the ſaid provinces, the whole amount of the ſame ſhall be diſpoſed of by acts of the aſſemblies of the provinces in which they ſhall be collected, reſpectively.

I do not mean on this occaſion to recommend to the publick the admiſſion of repreſentatives from the American colonies into the Britiſh Houſe of Commons; becauſe I have obſerved a diſinclination in both the contending parties to adopt a meaſure of this kind, which otherwiſe I ſhould think the eaſieſt and moſt natural method of reconciling and uniting them. But what I here propoſe is to give the Americans ſatisfaction and ſecurity, by declaring a reſolution not to tax them by the authority of the Britiſh parliament, of which they have expreſſed ſo great a dread and averſion, and at the ſame time to ſave the honour and dignity of that ſupreme legiſlature of all the Britiſh dominions, by exhorting them,

them, not to give up their right and authority to tax the inhabitants of the American provinces, but only to forbear the exerciſe of it till they have taken a ſtep towards the amendment of the conſtitution of their own body, which the moſt ſtrenuous advocates for their authority acknowledge to be agreeable to equity, in caſe it is their intention to uſe that authority for the purpoſe of taxing America. For the late Mr. George Grenville himſelf, and others of the moſt zealous defenders of the rights of the Britiſh parliament, have acknowledged that ſuch an alteration in the conſtitution of the Britiſh Houſe of Commons by admitting into it a reaſonable number of members for the American colonies, (agreeably to what was done a hundred years ago in the caſe of the biſhoprick of Durham,) would be perfectly conſtitutional and equitable, and could not well be refuſed to the Americans, if they were to deſire it, and to declare a willingneſs to ſubmit, in conſequence of it, to the authority of parliament in all things in the ſame manner as the inhabitants of Great-Britain. Until therefore an offer of this kind is made to the Americans and refuſed by them, it can be no derogation to the honour of parliament, but rather a proof of their equity and moderation, and therefore honourable to them, to forbear to exerciſe their authority over America in this delicate and dangerous buſineſs of taxation. And, as the people of Great-Britain

ſeem

ſeem hardly more diſpoſed to make ſuch an offer than thoſe of America are to accept it, this forbearance of the exerciſe of the authority of parliament may be continued for many years to come, perhaps for ever, without any loſs of honour to Great-Britain, and with great joy and ſatisfaction to the Americans.

Eighthly, That all the quit-rents, and other royal dues, collected in the provinces of America, ſhall be appropriated to the maintenance of the civil governments in the ſame, and ſhall be employed in the payment of the ſalaries of the governours, and judges, and ſheriffs or provoſt-marſhalls, and coroners, and other officers of juſtice and civil government in the ſame, ſo as to leſſen the taxes which it may be neceſſary for the governours, councils, and aſſemblies of the ſaid provinces, to lay on the inhabitants of the ſame for the ſaid purpoſe: and that a ſeparate receiver and collector of the ſaid quit-rents and other royal dues, be appointed by the ſeveral governours of the ſaid provinces reſpectively in every ſeparate province, who ſhall hold his ſaid office during the pleaſure of the governour of the province to which he ſhall belong, and his reſidence in the ſaid province, and no longer, and who ſhall receive and enjoy ſuch ſalary, or fees, or other emoluments, during his continuance in his ſaid office, as ſhall be allowed by an act of the governour, council, and aſſembly of the ſaid province. But the portions of the ſaid

quit-rents that ſhall be aſſigned to the governour, and judges, and other officers of civil government in the ſaid provinces reſpectively, ſhall be ſuch as his Majeſty, in his royal wiſdom, ſhall think fit to appoint.

Alſo it ſhould be provided that no governour, judge, or other officer of the civil government of any ſuch province, ſhould receive any part of the ſalaries ariſing from theſe quit-rents, or other royal dues, during the time of his abſence from the ſaid province, or, after his return to the province, in conſideration of his having held the ſaid office during ſuch abſence; but that ſo much of his ſaid ſalary, ariſing from the ſaid quit-rents and other royal dues, as would have accrued to him in the ſaid ſpace of time, if he had reſided during the ſame in the ſaid province, ſhall be deemed to be forfeited by his ſaid abſence, and ſhall make a part of the publick treaſure of the province, and be diſpoſed of by the joint act of the governour, council, and aſſembly of the ſaid province.

The amount of theſe quit-rents and other royal dues in America ſhould be made good to his Majeſty out of the ſinking fund.

Ninthly, The offices of ſecretary of the province, clerk of the council, regiſter of deeds and patents, or clerk of the inrolments of deeds and patents, provoſt-marſhall, or ſheriff, commiſſary

commiſſary of ſtores, receiver-general of the king's revenue, coroners, clerks, or regiſters, of the courts of juſtice, naval officer, collector of the cuſtoms, comptroller of the cuſtoms, and all other offices of the civil government in every province, ſhould be given to perſons reſident in the province, to be executed by themſelves, without a power of making deputies; and the fees to be taken by them ſhould be ſettled by acts of the governour, council, and aſſembly of the ſaid province in which they are holden; and they ſhould be holden during the pleaſure of the governour, or of the king, as his Majeſty, in his royal wiſdom, ſhall think fit, but ſhould never be given by patents under the great ſeal of Great-Britain, to be holden during the lives of the patentees; and, much leſs, ſhould they be granted in reverſion: and they ſhould be holden by ſeparate officers, ſo that no two of them ſhould be holden by the ſame perſon.

The preſent patentees of any of theſe offices ſhould have compenſations made to them for the loſs of their patents by penſions for their lives payable out of the ſinking-fund.

Tenthly, In the governments called royal governments, (which are carried on by virtue of the king's commiſſion only, without a charter,) the councils of the ſaid provinces ſhould be made more numerous than they now are, and

and ſhould be appointed for life, or during their good behaviour. They now uſually conſiſt of twelve members, all of whom may be removed at the pleaſure of the crown, and ſuſpended from the execution of their offices by the governours of the reſpective provinces till the pleaſure of the crown can be known. This renders them of little weight and conſequence in the eyes of the people, and conſequently of little advantage to the governour in ſupporting his majeſty's authority, and preſerving the peace of the province. It would, therefore, be proper to enlarge their number to at leaſt 23 members, and, in the more populous provinces, to a greater number, (in Virginia, perhaps, to 43,) of whom at leaſt 12 ſhould be neceſſary to make a board, and do buſineſs, and to appoint them for life, or during their good behaviour, ſo that they could not be removed from their ſaid offices without a charge of ſome miſconduct that ſhould be a ſufficient ground for removing them from the ſaid office, and a proof and conviction of the ſame in a trial by jury upon a writ of *ſcire facias* to repeal the patent by which they had been appointed to ſuch office, or ſome other law-proceeding analogous to ſuch writ. This numerous council ſhould be the legiſlative council of the province, and ſhould concur with the aſſembly of the people in making laws.

But,

But, for the executive part of government, the king might appoint a leſſer council, conſiſting of not fewer than 12 perſons, who ſhould be a council of ſtate to adviſe the governour in all thoſe matters relative to the execution of the powers of his commiſſion, in which he was directed by his commiſſion to act with the advice of his council. And ſeven members of this council ſhould be neceſſary to make a board, or do buſineſs. The members of this council ſhould hold their places at the pleaſure of the crown, as the king's privy-counſellors do in England; but ſhould not be removeable, or ſuſpendible, by the governour. They might either be the members of the greater, or legiſlative, council, or not, as his Majeſty, in his royal wiſdom, ſhould think fit.

This meaſure, "of making the members of the legiſlative councils more numerous than they now are, and independant of the crown, in order to give them more weight and dignity in the eyes of the people, and thereby to render them more capable of being uſeful in the ſupport of his majeſty's government," is recommended by ſome of the warmeſt friends of Great-Britain in North-America; of which I will mention an inſtance or two. In the year 1774, a very ſenſible pamphlet was publiſhed for Thomas Cadell, in the Strand, intitled,

intitled, " *Conſiderations on certain political tranſactions of the province of South-Carolina.*" This pamphlet has been generally aſcribed to Sir Egerton Leigh, baronet, his majeſty's attorney-general for that province. But, whoſoever the author of it may be, he appears to be a perſon well acquainted with the affairs of America, and more eſpecially of that province, and a zealous friend to the intereſts of Great-Britain in America, and to the continuance of an amicable connection between the two countries upon the old footing of a ſubjection of them both to the authority of the Britiſh parliament. In pages 68, 69, 70, of this pamphlet there is the following paſſage: " In my apprehenſion, it ſeems " abſolutely neceſſary that the numbers of " the council ſhould be encreaſed; and for " this plain and obvious reaſon, becauſe a " body of twenty-four counſellors, for in- " ſtance, appointed by the king from the " firſt rank of the people, moſt diſtinguiſhed " for their wealth, merit, and ability, would " be a means of diffuſing a conſiderable in- " fluence through every order of perſons in " the community, which muſt extend very " far and wide, by means of their particular " connections; whereas a council of twelve, " ſeveral of whom are always abſent, can " have little weight, nor can their voices be " heard amidſt the clamour of *prevailing* " numbers.

" I think

" I think this body, acting legiſlatively, " ought to be made independent, by holding " that ſtation during the term of their na- " tural lives, and determinable only on that " event, or on their intire departure from " the province. But the ſame perſon might " nevertheleſs, for proper cauſe, be diſplaced " from his ſeat in council; which regula- " tion would, in a great meaſure, operate " as a *check* to an arbitrary governour, who " would be cautious how he raiſed a power- " ful enemy in the upper houſe by a raſh " removal; at the ſame time that the power " of removal would keep the member with- " in proper bounds. The life-tenure of his " legiſlative capacity would likewiſe ſuffi- " ciently ſecure that *independency* which is ſo " neceſſary to this ſtation, and ſo agreeable " to the conſtitution of the parent-ſtate. I " know ſome folks will raiſe both ſcruples " and fears; but for my own part, I think " without much reaſon: for if we attend to " the workings of human nature, we ſhall " find, that a certain degree of attachment " commonly ariſes to the fountain from " whence an independent honor flows. Op- " poſition ſeldom ſettles upon the perſons " who are raiſed to dignity by the favour of " the crown, it having ſo much the appearance " of ingratitude, one of the moſt deteſted " vices; and it ever acts a *faint* and *languid*

" part,

" part, till a deſcent or two are paſt, and " the author of the elevation is extinct. " From this reaſoning it ſeems tolerably " clear to me, that the legiſlator being for " life, and deriving his conſequence from " the crown, will rather incline to *that* " *ſcale*; and it is not probable that his op- " poſition could in any inſtance be *rancorous* " or *factious*, inaſmuch as, though his life- " eſtate is ſecure, he would not wiſh un- " neceſſarily to excite the reſentment of the " crown, or exclude his deſcendants or con- " nections, perhaps, from ſucceeding after- " wards to ſuch a poſt of honour and diſ- " tinction in their native country: in ſhort, " this idea ſeems to admit ſuch a *qualified* " *dependency*, as will attach the perſon to " the ſide of the crown in that propor- " tion which the conſtitution itſelf allows, " and yet ſo much *real independency*, as " will make him ſuperior to acts of mean- " neſs, ſervility, and oppreſſion. Whether " theſe ſentiments are well founded, or " not, I ſubmit to the impartial judge- " ment of my reader; what I principally " mean to infer is, that the happineſs of " theſe colonies much depends upon a due " *blending* or *mixture* of power and depen- " dance, and in preſerving a proper ſubordi- " nation of rank and civil diſcipline." And in pages 72, 73, of the ſame pamphlet is the

the following paſſage: " I cannot cloſe this " ſubject without expreſſing my ſincere con- " cern, that ſuch unhappy diſputes divide " mens minds, and diſtract the publick coun- " cils of this country; and I have preſumed " to offer theſe conſiderations to the world, " that the ſubject may be fully underſtood, " and that this colony as well as others may " judge of it with the greater eaſe and cer- " tainty, by ſeeing every fact fairly ſtated and " candidly diſcuſſed. But I muſt again re- " peat, that twelve members of the council " bear no kind of proportion to the numbers " of the Lower Houſe, which conſiſts of " forty-eight members: and what ſtill adds " to the defect is, that, as ſeveral of the " council are frequently and neceſſarily ab- " ſent on their own private concerns, and it " often happens, that others are either abſent " from the province, or, through ſickneſs, " are unable to attend, the council ſeldom " conſiſts of more than five perſons; and " commonly only three aſſemble to diſpatch " the moſt weighty concerns. This circum- " ſtance leſſens the real and conſtitutional " dignity which this body are intended to " maintain, and the people cannot be taught " to reverence or reſpect an inſtitution, the " buſineſs whereof is tranſacted, like a court " of quarter ſeſſions, by three juſtices of " peace! Hence it is, that the middle branch

" is in a manner overwhelmed by the force of
" numbers in the Lower Houſe, and that
" they fall into deriſion and contempt for the
" want of numbers in their own. I there-
" fore moſt ardently wiſh to ſee this evil re-
" medied, by ſuch an addition to the number
" of his Majeſty's council, as that twelve
" members at leaſt may always be aſſembled
" on the buſineſs of the ſtate; then, and not
" till then, will this middle branch be able
" to maintain a proper balance to ſupport
" their own conſtitutional importance, and
" to withſtand the overbearing attempts, and
" the haughty encroachments of the Lower
" Houſe.

" I ſincerely wiſh the laſting happineſs of
" the colony of South Carolina; and I am
" firmly perſuaded, that nothing is ſo likely
" to promote it, as a timely and ſpeedy inter-
" poſition on the part of the crown, and a
" deciſive ſettlement of theſe uneaſy conten-
" tions upon the ſound principles of the
" Engliſh conſtitution."

And the late Mr. Andrew Oliver, (who was firſt Secretary, and afterwards Lieutenant-governour, of the province of the Maſſachuſets bay,) in one of his letters to the late Mr. Thomas Whately, (who had been ſecretary to the Treaſury under the late Mr. George Grenville,) dated February 13, 1769, writes

as

as follows: " You obſerve upon two defects
" in our conſtitution, the popular election of
" the council, and the return of juries by
" the towns. The firſt of theſe ariſes from
" the charter itſelf; the latter from our pro-
" vincial laws.----As to the appointment of
" the council, I am of opinion that neither
" the popular elections in this province, nor
" their appointment in what are called the
" royal governments, by the king's *mandamus*,
" are free from exceptions, eſpecially if the
" council, as a legiſlative body, is intended
" to anſwer the idea of the Houſe of Lords
" in the Britiſh legiſlature. There they are
" ſuppoſed to be a free and independent body,
" and on their being ſuch, the ſtrength and
" firmneſs of the conſtitution does very much
" depend: whereas the election or appoint-
" ment of the councils in the manner before-
" mentioned renders them altogether de-
" pendent on their conſtituents. The king
" is the fountain of honour, and as ſuch the
" peers of the realm derive their honours
" from him, but then they hold them by a
" ſurer tenure than the provincial counſellors,
" who are appointed by *mandamus*. On the
" other hand, our popular elections very
" often expoſe them to contempt; for no-
" thing is more common, than for the repre-
" ſentatives, when they find the council a
" little untractable at the cloſe of the year, to

" remind them that May is at hand."-----
" It is not requiſite, that I know of, that a
" counſellor ſhould be a freeholder. Accor-
" ding to the charter, his reſidence is a ſuffi-
" cient qualification: for that provides only
" that he be an inhabitant of, or proprietor
" of lands within, the diſtrict for which he
" is choſen: whereas the peers of the realm
" ſit in the Houſe of Lords, (as I take it,)
" in virtue of their baronies. If there ſhould
" be a reform of any of the colony-charters,
" with a view to keep up the reſemblance of
" the three eſtates in England, the legiſlative
" council ſhould conſiſt of men of landed
" eſtates. But, as our landed eſtates here
" are ſmall at preſent, the yearly value of
" £.100 ſterling *per annum* might, in ſome
" of them at leaſt, be a ſufficient qualifica-
" tion. As our eſtates are partible after the
" deceaſe of the proprietor, the honour could
" not be continued in families, as in England.
" It might however be continued in the
" appointee *quamdiu ſe benè geſſerit*, and proof
" might be required of ſome mal-practice
" before a ſuſpenſion or removal. Bank-
" ruptcy alſo might be another ground for
" removal."-----" The king might have the
" immediate appointment [of theſe counſel-
" lors] by *mandamus*, as at preſent in the
" royal governments."-----" Beſides this le-
" giſlative council, a privy council might be
" eſtabliſhed."

" eſtabliſhed." Theſe authorities are ſurely very reſpectable, and of prodigious weight in favour of ſuch an amendment of the conſtitutions of the king's councils in North-America. Alterations of thoſe governments in favour of liberty, that are ſuggeſted and recommended by ſuch friends to the authority of Great-Britain as the authors of the foregoing paſſages, ſeem to be indiſputably reaſonable, and expedient, and fit to be adopted by Great-Britain.

Eleventhly, To declare, by reſolutions in both houſes of parliament, that it is not expedient to require the American colonies to contribute any thing towards the diſcharge of the national debt already contracted, in any mode whatſoever, either by taxes to be impoſed by the Britiſh parliament, or by grants in their own aſſemblies, or in any other manner whatſoever; but only that it is reaſonable that they ſhould contribute in a moderate proportion, ſuited to their ſeveral abilities, to ſuch of *the future* expences of the Britiſh empire, as are of a general nature, and relate to all the dominions of the crown, and of which they will reap the benefit, as well as the inhabitants of Great-Britain.

Twelfthly, To offer an act of pardon, indemnity, and oblivion to all the Americans, who have offended the laws, upon their laying

ing down their arms, and returning to the obedience of the crown within a limited time: without making any exceptions whatſoever, not even of Mr. Adams and Mr. Hancock.

By ſuch a plan the principal cauſes of uneaſineſs and diſcontent amongſt the Americans would, as I conceive, be taken away, and, conſequently, if they are ſincere in their declarations of a deſire to continue connected with Great-Britain, (as it ſeems highly probable that all the colonies, except thoſe of New-England, are; and perhaps even in thoſe colonies there may be many perſons of the ſame diſpoſition;) it ſeems reaſonable to hope that it would be generally approved and accepted by them. And yet the ſupream authority of the parliament of Great-Britain would not be given up.

FINIS.