



Proceedings in the Assembly  
of Lower Canada on the Rules  
of practice of the Courts of Jus-  
tice, and the impeachments  
of  
Jonathan Sewell  
and  
James Monk  
1814.



**PROCEEDINGS**  
**IN THE**  
**ASSEMBLY**  
**OF**  
**LOWER CANADA**  
**ON THE**  
**RULES OF PRACTICE**  
**OF THE COURTS OF JUSTICE,**  
**AND THE**  
**IMPEACHMENTS**  
**OF**  
**JONATHAN SEWELL**  
**AND**  
**JAMES MONK, Esquires.**

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PRINTED BY ORDER OF THE HOUSE.

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1814.

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# HOUSE OF ASSEMBLY,

*Friday, 14th January, 1814.*

**R**ESOLVED, That this House will, on the twenty-second instant, resolve itself into a Committee of the whole House, to take into consideration the power and authority exercised by His Majesty's Courts of Justice in this Province, under the denomination of Rules of Practice.

The House, pursuant to the foregoing Resolution, resolved into Committee on different days, and on Tuesday the first February, Mr. *Dénéchau*, the Chairman, reported, that the Committee had come to several Resolutions, which he was directed to submit to the House, whenever it shall be pleased to receive the same and it was,

ORDERED, That the Report be received to-morrow.

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*Wednesday, 2d February, 1814.*

**M**R. *Dénéchau*, from the Committee of the whole House, to whom it was referred to consider the powers and authorities exercised by the Courts of Justice in this Province, under the denomination of Rules of Practice, reported, according to order, the Resolutions of the Committee : And he read the Report in his place, and afterwards delivered it in at the Table, where the Resolutions were again read by the Clerk, and are as followeth, viz :

RESOLVED, that it is the opinion of this Committee, that the Legislative power in this Province is exclusively vested in His Majesty and in the Legislative Council and Assembly, to whom only, in the said Province, it belongs to make laws for the welfare and good Government of the said Province.

- 2 That the Laws, usages and customs of Canada, secured and confirmed to the inhabitants of this Province by the act of the Parliament of Great Britain in that behalf made, can in no respect be altered,

altered, changed or modified, except by the authority of the Legislature of this province.

3. That the power and authority of His Majesty's Courts of Justice in this province are purely judicial, and that no alteration of the said Laws can be made by the Judges of the said courts, without the most criminal breach of their duty, and a violation of their oaths of office.
4. That by certain regulations under the name of "*Rules and orders of Practice*," made by the Courts of Appeals of this province on the 19th day of January 1809, and still in force, the said Court of Appeals, of which *Jonathan Sewell, Esq.* Chief Justice of this Province, was and still is president, hath exercised a Legislative authority, and established rules, affecting the civil rights of His Majesty's subjects, contrary to and subversive of the laws of this province.
5. That His Majesty's Court of King's Bench for the District of Quebec, in which *Jonathan Sewell, Esq.* as Chief Justice of this Province, presides, by certain regulations under the name of "*Rules and orders of Practice*," made in the term of October, 1809, and still in force, hath exercised a Legislative authority and established rules affecting the civil rights of His Majesty's subjects, contrary to and subversive of the Laws of this Province.
6. That His Majesty's Court of King's Bench for the District of Montreal, of which *James Monk, Esq.* is Chief Justice, by certain regulations under the name of "*Rules and orders of Practice*," made and published in the term of February 1811, and at subsequent times, and still in force, hath exercised a Legislative authority and established rules affecting the civil rights of His Majesty's subjects, contrary to, and subversive of the Laws of this Province.
7. That an arbitrary and unconstitutional authority hath, by the said Regulations of the said Courts, been exercised in respect of the Attornies and Officers of the said Courts, by declaring them guilty of the crime of "Contempt" in certain cases, to which the said Courts have in their discretion thought fit to apply that crime;  
and

and by subjecting them to severe prosecutions and penalties, to which they were not liable by the law of the land.

8. That by the said Regulations, His Majesty's Subjects are, in certain cases, unjustly and illegally debarred from the prosecution and defence of their rights in the said Courts, unless they previously make deposits of money, not required by law to be made, whereby the benefit of the Laws and the administration of Justice are denied to His Majesty's Subjects, except on conditions prescribed by the said Courts, with which many of them may be unable to comply.
9. That by the said Regulations, rules of prescription contrary to law, and destructive of the just and legal rights of His Majesty's Subjects, are in certain cases established.
10. That the said Courts, by the said Regulations, have attributed to themselves an extraordinary and unprecedented authority of making spontaneous and unsolicited determinations in a cause, which are styled "Orders and Judgments *ex officio*," whereby justice is refused to both parties in a cause, and the said Courts blend and confound the offices of party and Judge in the same persons.
11. That the powers assumed by the said Courts are inconsistent with, and subversive of the Constitution of this Province; are calculated to deprive His Majesty's Canadian Subjects of their Laws; must render the enjoyment of liberty and property altogether insecure and precarious, and give to the Judges an arbitrary authority over the persons and property of His Majesty's subjects in this Province.

ORDERED. That the question of concurrence be put on the said Resolutions.

And then the House adjourned.

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Friday, 4th February, 1814.

THE House proceeded to take into consideration the order of the second instant, for putting the question of concurrence on the Resolutions

Resolutions of the Committee of the whole House, to whom it was referred to take into consideration the powers and authorities exercised by the Courts of Justice in this Province, under the denomination of Rules of Practice.

And the said Resolutions being debated, were carried in the affirmative, *viz* :

The three first unanimously.

The fourth, Yeas 16—Nays 2.

The fifth and sixth, Yeas 16—Nays 5.

The seventh to the tenth. inclusive, Yeas 19—Nays 5.

The eleventh, Yeas 17—Nays 5.

And it was

RESOLVED, That this House doth concur with the Committee, in the said Resolutions.

RESOLVED, that a Committee of seven Members be appointed to examine particularly the Rules of Practice of the Courts of Justice in this Province, and report in detail on the principal points wherein they are contrary and repugnant to the Laws of the Land, and to enquire into any circumstances that may appear to them material, relatively to the said Rules of Practice, and the Practice of the said Courts, and that the said Committee do also report their opinion as to the course which it is expedient to pursue for vindicating the Authority of the Legislature, and repressing such abuses of Judicial Power ; and that the said Committee be empowered to send for persons, records, and papers.

ORDERED, that Mr. *Stuart*, Mr. *Borgia*, Mr. *Papineau*, Mr. *Lee*, Mr. *Bourdages*, Mr. *Blanchet*, and Mr. *Joseph Bedard*, do compose the said Committee.

*Wednesday,*



*Wednesday, 16th February, 1814.*

**M**R. *Stuart* from the Committee appointed to examine particularly the Rules of Practice of the Courts of Justice in this Province, and report in detail on the principal points wherein they are contrary and repugnant to the Laws of the Land, and to enquire into any circumstances that may appear to them material, relative to the said Rules of Practice, and the Practice of the said Courts; and also to report their opinion, as to the course which it is expedient to pursue for vindicating the authority of the Legislature, and repressing such abuses of Judicial Power, reported, that the Committee had framed a Report accordingly, which he was directed to submit to the House, whenever it shall be pleased to receive the same.

And he read the Report in his place, and afterwards delivered it in at the table, where it was again read once throughout by the Clerk, and is as followeth, *viz*,

COMMITTEE

COMMITTEE ROOM, 15th FEBRUARY, 1814.

## Report of a Committee appointed to examine particularly the Rules of Practice of the Courts of Justice in this Province, and report in detail on the principal points wherein they are contrary or repugnant to the Laws of the Land, and to enquire into any circumstances that may appear to them material relatively to the said Rules of Practice, and the Practice of the said Courts, and also to report their opinion as to the course which it is expedient to pursue for vindicating the Authority of the Legislature, and repressing such abuses of Judicial Power.

**Y**OUR Committee, impressed with a sense of the great importance of the subjects referred, have given them the most deliberate consideration, and beg leave now to submit their Report in obedience to the Order of this House. Your Committee have in the first instance directed their attention to the Rules of Practice of the Provincial Court of Appeals.—In the preamble to these Rules, certain clauses of Laws are recited apparently as the authority in virtue of which the Rules have been made. These are the 6th Par. Prov. Ord 27 Geo. III. c. 4. and the 16th Sec. of the Prov. Stat. 41st Geo. III. c. 7. By the former it is declared “ That the Provincial Court  
“ of Appeals shall have authority to make Rules and Orders to regulate, effectuate, and accelerate the proceedings in all causes of  
“ Appeal for the advancement of Justice, and to prevent unnecessary  
“ delays and expence in the same ;” and by the latter it is declared,  
“ That the different Courts of Civil Judicature in this Province shall  
“ have power and authority to make and establish Rules and Orders  
“ of Practice in the said Courts, in all Civil matters, touching all  
“ services

“ services of Process, execution, and Returns of all Writs, procees-  
 “ dings for bringing causes to issue, as well in Term time as out of  
 “ Term, and other matters of regulation within the said Courts.”

It appears to Your Committee, that the Courts of Canada under the French Government, prior to the Conquest, neither possessed, claimed, nor exercised the power of making Rules to direct and govern their Practice, adequate provisions for that purpose having been made by the Common Law of France, and the Ordinances of the French King, to which those Courts were bound to yield an implicit obedience. The alterations made in the Judicature of the Country, and the English Forms of Judicial proceedings introduced subsequently to the Conquest, having made many of the Regulations of the French Law inapplicable, some Rules became necessary to settle points of Practice not regulated by any existing Law. To Sanction the power of supplying such deficiencies in matters of mere practice, by occasional Rules, appears to have been the motive for the enactment of the clauses above recited. And by those Clauses, it is the opinion of your Committee that the Legislaturè has recognized in the Courts to which they respectively refer the power of regulating, by Rules not contravening any known Law of the Land, the matters of Practice specified in them. This limited power appears to Your Committee to have been exercised by the Courts, without exciting complaint or alarm till the making of the Rules of Practice of the Provincial Court of Appeals on the 19th January 1809, when that Court thought proper to take a much wider range for its regulations, and set an example of encroachment on the Legislative Authority which has been too successfully imitated by the Courts of original Jurisdiction. Your Committee will here notice the most material of the regulations by which, in their opinion, the Court of Appeals has exercised Legislative Authority.

By the Common Law of Canada, a party aggrieved by a judgment final or interlocutory had a right to appeal from it as a matter of course. This right in respect of a final Judgement is recognized by the Provincial Ordinance 25th Geo. III. c. 2. s. 24, which directs “ that the  
 “ party meaning to Appeal from any definitive Sentence or Judgement  
 “ of any of the Courts &c. shall sue out a Writ from the Court of  
 “ Appeals,

“ Appeals, tested and signed by the Governor, Lieutenant Governor  
 “ or Chief Justice, stating that the Appellant complains of being  
 “ aggrieved by the Judgement, and therefore commanding the Judges  
 “ of the Inferior Court, or any two of them to send up the original  
 “ papers and proceedings &c. and the Writ, it is declared, shall be  
 “ allowed by any Judge of the Inferior Court, after the requisite se-  
 “ curity has been given.” The right of Appeal from an interlocutory  
 Judgement is permitted by this Ordinance only in certain cases, and  
 after an Order of the Court of Appeals granting an Appeal has, on  
 motion of the party in that behalf, been made ; but such motion may,  
 by Law, be made at any stage of the proceedings before final Judge-  
 ment Restraints and Restrictions have by those Rules of Practice been  
 laid on the legal right of Appeal from Judgments both final and in-  
 terlocutory By the 8th Section of the said Rules, it is declared  
 “ That no Writ of Appeal from any interlocutory or definitive Judge-  
 “ ment given in the Court of King’s Bench for the District of Mon-  
 “ treal, or in the Court of King’s Bench for the District of Three-  
 “ Rivers shall issue in any suit until the party Appellant in such Suit  
 “ shall have deposited in the hands of the Clerk of this Court, the  
 “ Sum of four pounds, to defray the postage of the record in such Suit,  
 “ and the overplus, if any there be, shall by the Clerk of this Court  
 “ be paid to such Appellant on demand,” And, by the 30th Section  
 of the same Rules, it is declared “ That no motion for an Appeal from  
 “ an interlocutory Judgment shall be made or received at any time  
 “ whatever after the first Day of the Term of this Court next after  
 “ the day of the date of such interlocutory Judgment, the April Term  
 “ of the Court excepted, during which any such motion shall be recei-  
 “ ved until the sixth day of the Term inclusive.”

Your Committee respectfully submit their opinion, that these Regu-  
 lations are not only contrary to Law, but imply the assumption of a  
 power by which at the pleasure of the Judges the whole system of the  
 Laws might be rendered a dead letter and incapable of conferring the  
 benefits it was intended should be derived from them By the first the  
 right of appeal is denied except on a condition prescribed by the  
 Court, and it is obvious that if the Court could make the deposit  
 of a sum of money a condition precedent to the right of institut-  
 ing an appeal, they could impose any other conditions they might  
 think

think fit to the exercise of that right, and so shackle it as to render it unavailing. The requiring of a larger deposit would alone shut the door of justice to many persons aggrieved by unjust judgments, and the power of indefinitely increasing the amount of the deposit, which is implied in the discretionary power assumed by the Court, might be so exercised as to exclude all persons whatever from the benefit of an appeal. It is evident also, that this power, if admitted to bar a right of appeal, might be applied to bar any other legal right, as for instance the right of instituting or defending an action, and the King's subjects be thus excluded from the exercise of legal remedies for wrongs done to them, and debarred from making their defence against unjust demands. Your Committee will have occasion to shew that the Courts of original jurisdiction have realized these evils by depriving parties in certain cases of the right of prosecuting or defending their rights, unless they comply with similar conditions.

By the second of the said Regulations, your Committee are of opinion, that a rule of the nature of a law of prescription has been established, whereby the King's subjects are deprived of the benefit of an appeal from an interlocutory judgment unless they exercise the right of appeal within the time prescribed by the Court, and may thus incur great loss and injury. When your Committee consider that nothing short of the supreme power of the country can bar or extinguish a legal right of the meanest of the King's subjects, they must both feel and express alarm at a rule, by which a Court of Justice arrogates to itself the power of prescribing and barring a right common to all.

By the Provincial Statute 34 Geo. III. c. 6. commonly called the Judicature Act, the Courts thereby established are made competent to exercise their judicial powers in certain Terms or defined spaces of time, and four such Terms in the year are allotted to the Court of Appeals. All Writs of Appeal, before the making of these Rules, were, and as your Committee believe ought to be, made returnable on some juridical day in one of these Terms, in order that the Respondent may have a day in Court to appear and answer to the demands of the Appellant. But an innovation in this respect has been made by the 9th Section of the said Rules, whereby it is ordered " That every Writ of  
" Appeal

“ Appeal as well from an interlocutory as from a definitive judgment,  
 “ to be hereafter issued, shall be tested upon the date on which the same  
 “ shall issue, and every such writ shall be returnable in fifteen days from  
 “ the day of the teste thereof.” Your Committee are of opinion that  
 this Rule, in so far as it makes a Writ of Appeal returnable out of  
 Term, is illegal.

By the 10th Section of the said Rules, it is declared, “ That every  
 “ Prothonotary who, without lawful cause, shall refuse or neglect to  
 “ make return of any Writ of Appeal, which shall be issued in any  
 “ Suit, and by him be received within the period thereby allowed for  
 “ the return thereof, shall be deemed and taken to be guilty of a con-  
 “ tempt of this Court.”

Your Committee beg leave to submit, that the power of punishing  
 for contempts as exercised by the Courts in England, was not known  
 in the law of this Country as it stood at the time of the conquest.  
 To what extent that power may have been introduced by the Criminal  
 Law of England, in force in this Province, it is not necessary to enquire.  
 For admitting that the power of punishing for Contempts, as regula-  
 ted by the Criminal Law of England has, in this Province, been de-  
 rived from that law, it can only belong to the Courts of Criminal Ju-  
 risdiction, and from it, your Committee apprehend, no right can be  
 inferred in any Court to determine what in future shall constitute the  
 crime of “ Contempt,” the power to do so belonging exclusively to  
 the Legislature. And your Committee are therefore of opinion, that  
 the said last mentioned Rule is arbitrary and illegal. They take the  
 liberty of adding also, that by this Rule, the crime of Contempt is  
 fixed on the Prothonotary for the non-fulfilment of a duty (the  
 making of a Return to a Writ of Appeal) which is not by law im-  
 posed on him, but on the Judges to whom the Writ is addressed,  
 and from whom the Court of Appeals has a right to enforce the mak-  
 ing of a Return.

By the 13th Section it is declared, “ That personal service of any  
 “ Writ of Appeal upon the Attorney who has appeared in the Court  
 “ below for the Respondent or Respondents, or in default of such ser-  
 “ vice upon the Respondent or Respondents, at his, her or their do-  
 “ micile,

“ micile, or in default of such domicile, upon the Attorney *ad negotia*,  
 “ upon record in such suit, shall be held and taken to be a good and  
 “ sufficient service of such Writ, with respect to such Respondent or  
 “ Respondents so served in such cases respectively.”

The Power of an Attorney *ad litem*, is by law determined when final Judgment has been rendered in the cause, in which he has been retained, and as he then ceases to represent his Client, no service on him afterwards, can be, or is by law binding on his Client; yet by this Rule the service of the process of another Court on the person who has ceased to be Attorney, is contrary to law, declared legal and binding on his former Client. By this Rule, also, the service of the Writ on an Attorney *ad negotia* is, contrary to law, declared legal. The law of Canada has prescribed the modes in which process in different cases shall be served, among which those last mentioned required by the Court are not to be found. Your Committee are, therefore, of opinion, that this Rule is contrary to law, and in making it, the Court of Appeals assumed to itself legislative authority.

By the Provincial Ordinance, 25th Geo. III. chap. 2. Sec. 15, 16, and 17, the mode of compelling the filing of Reasons of Appeal and Answers to them, and the delays within which they are to be filed, are prescribed. The Appellant is enjoined to file his Reasons within eight days after the return of the Writ, and if he do not, the Respondent may obtain an order on him to file them in four days, and if this order be not complied with, the Appeal is to be dismissed with costs. The respondent is enjoined to file his answers within eight days after the filing of the Reasons of Appeal, and, if he neglects to do so, the Appellant may obtain a Rule, that unless he file them within four days, he shall be precluded from filing them after that period.

The 16th, 17th, 18th and 19th Sections of the said Rules of Practice, are in direct contradiction to the said law, in the following points :

1st. They substitute Notices by the Attornies of the Parties respectively, instead of the Rules or Orders of the Court required by the

said

said Ordinance, and make the same penal consequences attach to a non-compliance with the said Notices as with the said Rules or Orders.

2dly. They allow only four days instead of eight allowed by law, for fying Answers, after the Reasons of Appeal have been fyled.

3dly. They allow a delay of *two* days only, instead of *four*, for fying Answers after they are demanded.

4th. Although no person, except the Respondent, is interested in demanding, nor can by law demand the fying of Reasons of Appeal, and although by the said Ordinance the Appellant is not bound to fyle his Reasons of Appeal till after he is required to do so by a Rule or Order of Court on motion of the Respondent, and although it be altogether inconsistent with the Judicial Functions, that a Court should make an Order in a Cause injurious to one party and beneficial to the other, except where such order is demanded by one of the Parties, and authorized by law; yet by the 17th Section of the said Rules, it is declared, " That every Suit and Appeal in which the Reasons of Ap-  
 " peal shall not be fyled within one Calendar Month from the day of  
 " the Return of the Writ of Appeal issued in such Suit, shall be deem-  
 " ed and taken to be deserted by the Appellant or Appellants in such  
 " Suit so neglecting to fyle such Reasons of Appeal, and thereupon  
 " dismissed with costs accordingly, upon the first (or any subsequent day)  
 " in Term thereafter, upon motion for that purpose, upon the part of  
 " the Respondent or Respondents, or either of them, or by the Court  
 " *ex officio* without such motion, as may happen."

5thly. Although no person except the Appellant is interested in demanding, nor can by law demand, the fying of Answers to the Reasons of Appeal, and although by the said Ordinance, the said Respondent is not bound to fyle his Answers till after he is required to do so, by a Rule or Order of Court, on motion of the Appellant, and altho' the making of Orders in a Cause not demanded or authorised by law, is as above stated, inconsistent with the duties of a Judge, yet, by the said 19th Section of the said Rules, it is declared, " That every Suit  
 " in which the Answers to the Reasons of Appeal shall not be fyled  
 " within Ten Days from the day on which the Reasons of Appeal in  
 " such Suit shall be fyled, shall be deemed and taken to be deserted by  
 " the



“ the Respondent and Respondents in such Suit so neglecting to fyle  
 “ such Answers, and such Respondent and Respondents wholly pre-  
 “ cluded from fying Answers to such Reasons of Appeal, and there-  
 “ upon this Court will proceed to hear the matter of such Suit, and the  
 “ Appeal therein depending *ex parte* on the part of the Appellant,  
 “ only, and proceed to Judgment therein, without the intervention  
 “ of such Respondent.”

Your Committee are therefore of opinion, that the said 16th, 17th, 18th and 19th Sections of the said Rules are illegal, and that the Court of Appeals in framing them, hath exercised Legislative authority.

By the 21st Section of the said Rules, the Appellant and Respondent are required to fyle Cases within Ten Days after the fying of the Reasons of Appeal, and if the Appellant do not fyle his Cases within that time, it is declared, that his Appeal “ shall be deemed and taken  
 “ to be deserted by such Appellant, and thereupon dismissed according-  
 “ ly, upon the first, or any subsequent day in Term thereafter, upon  
 “ motion for that purpose on the part of the Respondent or Respond-  
 “ ents in such Suit and Appeal or either of them, or by the Court  
 “ *ex officio*,” without such motion as may happen, &c. and each Suit  
 “ and Appeal in which the Appellant shall have so fyled his Cases,  
 “ and in which the Respondent shall not have so fyled his Cases, shall  
 “ be deemed and taken to be deserted by such Respondent, and the Ap-  
 “ellant heard therein *ex parte*, without the intervention of the Respon-  
 “ dent, his Counsel or Attorney, and such Order and Decree thereup-  
 “ made, as to Law and Justice shall appertain,” &c.

The fying of Cases is not required by law, but being designed to facilitate the right understanding of a Cause, and support the respective interests of the Parties, the omission of either Party to fyle them, it would appear, would perhaps be sufficiently punished by the disadvantage to which such party would thereby expose himself at the hearing of the Cause. By this Rule, in the opinion of your Committee, penal consequences, unreasonable, unjust and illegal, are attached to an omission to fyle Cases, within the limitation which is fixed, and your Committee are again called upon to notice in this Rule, the exercise of

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an authority *ex officio*, by which this Court in its discretion and *ex mero motu* deprives parties of their legal rights.

By the 27th Section of the Provincial Ordinance above cited, it is enacted that "when the reasons of Appeal and the Answers thereto are filed, the Court shall, on the application of either of the Parties, fix on such convenient day for the hearing of the Cause, as to it may seem proper."

In contradiction to this Law, and as your Committee conceive, by the assumption of an authority at once illegal and inconsistent with the powers and duties of Judges, it is declared by the 24th section of the said Rules, "That all Suits and Appeals which shall not be set down for hearing upon the motion of the Appellant or of the Respondent in each Suit and Appeal respectively, on or before the last day of the Term next after the day upon which the Reasons of Appeal in such Suit and Appeal shall be filed, shall forthwith by the Clerk of this Court be inscribed on the Roll for hearing in succession, according to the days upon which the Reasons of Appeal in each Suit and Appeal respectively, shall be filed, and such Suits and Appeals so inscribed, and each of them, shall thenceforth be and remain set down for hearing until heard or otherwise disposed of, and if not otherwise disposed of, shall be called on and come on to be heard upon the first and subsequent days of the then next ensuing Term and Terms in the order in which they shall be so inscribed, and no Suit or Appeal so inscribed upon the Roll for hearing, shall be taken therefrom, nor shall the hearing thereof be put off without a special application to the Court upon some extraordinary and sufficient ground, to be authenticated by affidavit after two days notice to the adverse party, and due proof of the service of such notice;" and by the 26th section of the said Rules, it is further declared, "That every Suit and Appeal fixed for hearing, in which (such Suit being called on) the Appellant and Respondent do not appear, or are not ready to proceed, shall be dismissed, without costs to either party."

Your Committee are of opinion, that the said 24th and 26th sections of the said Rules, are arbitrary and illegal, and are designed to vest in the Court of Appeals a power altogether inconsistent with its judicial  
C duties,

duties, which would frequently render the decisions of the Court in the cases provided for in those sections, partial and oppressive, and enable the Court, at its pleasure, to administer or deny justice to the King's subjects.

Your Committee have thus pointed out the principal regulations in the "Rules and Orders" of the Court of Appeals, which appear to them contrary and repugnant to the Law of the land; they beg leave now to proceed to submit respectfully their opinions on the "Rules and Orders of Practice" of the Court of King's Bench for the District of Quebec.

The power assumed by the Court of Appeals of declaring authoritatively what in future shall constitute the crime of Contempt we find exercised by the Court of King's Bench, in the first pages of its Rules. The law of Canada had sufficiently provided for the payment of Fees due to the Officers of Courts. But the Judges at Quebec have thought proper to add a penal sanction to the Civil obligation, in virtue of which the payment of fees might legally be enforced, by declaring, "that  
 " within one calendar month next after the last day of each Term res-  
 " pectively, every Barrister and every Attorney, &c. shall discharge  
 " and pay unto the several Officers of this Court, all legal fees whate-  
 " ver in which such Barrister and Attorney, respectively shall then be  
 " justly indebted and in arrear, to the Officers of this Court," and,  
 after prescribing a certain form in which complaint is to be made against  
 a Barrister or Attorney so indebted, it is further declared, "that if such  
 " fees so due and unpaid shall not by such Barrister or Attorney be  
 " paid or otherwise satisfied unto the Officer or Officers making such  
 " complaint as aforesaid, on or before the Sixth day of the Term in  
 " which such complaint shall be so delivered to such Justice, and if  
 " proof of such continued neglect or refusal to pay or otherwise satisfy  
 " such fees shall then also be made by the affidavit of such Officer or  
 " or Officers, or otherwise to the satisfaction of the Court, such com-  
 " plaint with the several exhibits thereunto annexed, upon the Peti-  
 " tion of such Officer or Officers for that purpose, shall be read and  
 " filed in open Court, and thereupon such Barrister or Attorney (if  
 " good cause to the contrary be not shewn instantly by or on behalf  
 " of

“ of such Barrester or Attorney) shall be held and taken and be ad-  
 “ judged to be guilty of a wilful breach of this Rule, in contempt  
 “ of the Court, and thereafter no motion shall be made or received in  
 “ in any Cause whatever, by or from such Barrister or Attorney, or  
 “ by or from any other Barrister or Attorney on his behalf, unless such  
 “ fees so due and unpaid shall be wholly discharged and paid, or other-  
 “ wise satisfied unto the Officer or Officers making such complaint, &c.

Your Committee are of opinion, that this Rule is not only illegal, arbitrary and unjust in the extreme, but attributes to the Court a power, which might become an engine of oppression of particular individuals at the Bar, and is calculated to degrade the profession and expose its members to arbitrary punishment.

The disposition of the Court of King's Bench, indeed, to array itself in terrors, is strongly evinced by a subsequent Rule, by which it is declared, “ that every wilful and unlawful breach of an Order or Rule  
 “ of Practice of this Court (for which no fine or other specific punish-  
 “ ment is provided in the body of such other Rule) shall be taken and  
 “ and considered to be a Contempt of Court in the person or persons  
 “ guilty of such breach as aforesaid, and punished accordingly.”

What breach of a Rule or Order of Court may or may not constitute a Contempt, your Committee apprehend, is a matter of Law fit to be determined judicially by the Court in each particular case, after the breach has been committed; but the Court, in the opinion of your Committee, has no power to declare prospectively that any breach, when it does occur, shall constitute a Contempt. The sweeping enactment of the crime of contempt contained in this Rule, your Committee deem alarming in the highest degree, as it is impossible to foresee to what excesses of injustice and oppression it might not be applied by a Court which concentrates in itself the power of Legislator, Jury and Judge in proceedings in which it is also Party. The general power also which seems to be ascribed to the Court “ to provide fines and punishments” may very reasonably heighten the apprehensions the Rule is calculated to excite, and from the comprehensiveness of the expression “ person or persons” used in the Rule, others than Officers of the Court are subjected to the severe penalties it inflicts. It

would seem also from the generality of the expressions in the Rule, that a non conformity with any of its Regulations, as for instance, those which, contrary to law, prescribe set forms of words in pleadings, &c. might subject persons, professional and unprofessional, to its penalties. Your Committee cannot express sufficiently strongly the sense they entertain of the illegal and arbitrary exercise of power, in making this Rule, and of the dangerous and oppressive consequences with which it is pregnant. The Court appears to your Committee to have been determined to enforce an exact compliance with illegal regulations, not only by the severity of its punishments, but by preventing those regulations from being openly canvassed in the causes in which they might come in question; for by the succeeding Rule, it is declared, "that a point of Practice settled by a Judgment of this Court, and entered on the Prothonotary's Book of Rules shall not be re-argued." (Sect. 3. Art. 2.) In the second Section of the said Rules, (Art. 11. and 14.) your Committee have remarked regulations respecting Attornies which appear to them illegal; and among these is a Rule, by which the legal mode of proceeding, when the Attorney of one of the parties in a cause dies is dispensed with, and a different mode prescribed, and also a Rule, by which it is declared, "that an Attorney who shall appear for any Party or Parties in any Suit in this Court, shall be held and taken to be Attorney to such Party or Parties in all matters and proceedings whatsoever, collateral and incidental to such Suit, as well before as after final Judgment." The Law of this Province, in the opinion of your Committee, has very clearly determined the nature, extent, and duration of the powers of an Attorney *au litem*, and the Court of King's Bench has not only, in the opinion of your Committee, interposed its Regulations on the subject very unnecessarily, but in doing so, has contravened the known law of the land.

By the law of this Province, a species of Prescription, under the name of "*Peremption d'instance*" has been established, whereby the discontinuance or cessation of proceedings in a cause during three years, renders it liable to be dismissed, on application to the Court to that effect. Notwithstanding this law, the Court of King's Bench at Quebec has declared by the said Rules, (Art. 16. Sec 3.) "That every case in which on the part of the Plaintiff or Plaintiffs there shall have been no proceedings for one whole Term, exclusive of the Term

" Term in which the last proceeding on the part of such Plaintiff or  
 " Plaintiffs was had, shall on motion of the Defendant or Defendants  
 " therein, grounded upon the Certificate of the Prothonotary, that no  
 " proceedings have been so had, be dismissed, *sauf à se pouvoir*, un-  
 " less good cause to the contrary be shown by such Plaintiff or Plain-  
 " tiffs," and by the 19th Art. of the same Section, it is further decla-  
 " red, " that every Case, Suit or Action, in which there shall have been  
 " no proceedings whatever for two whole Terms, exclusive of the  
 " Term in which the last proceeding was had, shall be deemed and  
 " taken to be deserted by the Parties, and thereupon by the Court  
 " *ex officio*, dismissed, *sauf à se pouvoir*, each Party paying his own  
 " costs: and to this end there shall be laid before the Court by the  
 " Prothonotary upon the first day of every future Term, a list of all  
 " Cases, Suits or Actions now or hereafter to be depending in this  
 " Court, which shall have been so deserted."

These Regulations are directly contrary to the law of *Peremption*, and  
 establish a new Rule of Prescription, by which the Plaintiff incurs  
 the loss of his Cause, by not proceeding during one Term, if the De-  
 fendant moves to that effect; whereas by the law of the land, he can  
 incur such loss only when his neglect to proceed has continued during  
*three years*, nor can his Action after the lapse of that time be dismiss-  
 ed, unless the Defendant demand the dismissal of it, and any interven-  
 ing step in the Cause covers the Prescription, whereas by the last of  
 the said Rules, the power of dismissing it *ex officio*, after two Terms,  
 is attributed to the Court: Your Committee are of opinion, that the  
 said Regulations are illegal, unreasonable and arbitrary, in the highest  
 degree, are most injurious to the rights and interests of his Majesty's  
 subjects, and amount to a denial of Justice.

By the 10th Art. of the 7th Sec. of the said last mentioned Rules, it  
 is ordered, " that no Plea of Exception, *Declinatoire*, *l'reremptoire à la*  
*forme*, or *dilatoire*, be received or filed, " unless the party offering such  
 " Plea, shall therewith deposit in the hands of the Prothonotary, the  
 " sum of Two Pounds Six Shillings and Eight Pence for each and every  
 " such Plea, to answer the Costs of the Respondent or Respondents  
 " upon such Plea, if the same shall be dismissed by the Court, or with-  
 " drawn by such Party, in the proportion of Eleven Shillings and  
 " Eight

“ Eight Pence to the Prothonotary, and One Pound Fifteen Shillings  
 “ to such Respondent or Respondents.”

Your Committee have already expressed their opinion of the illegal and dangerous precedent set by the Court of Appeals, in requiring the deposit of a sum of money to entitle a Party to the exercise of the legal right of appeal. In the Rule last cited, is to be found a most alarming exercise of the same power, by which the right of self-defence is made to depend on the will of the Court, and a Plea to the Jurisdiction even of the Court, or Exception *Declinatoire*, is not permitted, except on the terms which the Court is pleased to prescribe. Your Committee consider this Rule as a most flagrant violation of the right of the Subject, and as being illegal and arbitrary in the extreme.

A Rule of a similar description, is to be found in the 4th Art. of the 11th Sec. of the said Rules, by which it is declared, “ that the Party  
 “ who shall make option and choice of the Trial and Verdict of a Jury  
 “ in any Case, shall bear and pay, as well the fees payable to the several  
 “ Officers of this Court, for striking, summoning and impannelling  
 “ such Jurors as the fees payable to the Jurors, who in such case shall  
 “ appear and compose the Jury : and to this end the Party with his mo-  
 “ tion for a *Venire Facias*, shall deposit in the hands of Prothonotary  
 “ of this Court the sum of forty shillings &c. and that without such  
 “ deposit a motion for a Jury and *Venire facias*, or for either, shall  
 “ not in any case be received or filed.”

Your Committee are of opinion that the said last mentioned Rule is illegal and arbitrary.

In these Rules your Committee have also remarked Regulations of a Legislative nature, as to the proceedings to be observed preparatory to the distribution of monies arising from judicial sales, by which the old course of proceedings in such cases is set aside, and a new system introduced ; a conspicuous feature in which, is a constructive admission of demands to any amount established by the authority of the Court, whereby the necessity of proof to establish them is superseded. —and these regulations your Committee are of opinion are arbitrary and illegal.

The

The occasions on which an Election of *domicile* is required and the mode in which it is to be made are determined by law, and in no instance is there any specific form in which the Election is to be made: nevertheless, by the 6th art, of the 12th section of the said Rules, the Court has assumed to itself a Legislative authority, by prescribing an Election of domicile in a case in which it was previously required by Law and by requiring for its validity, when made without the ministry of an attorney, that it shall be made in certain prescribed Words, without the adoption of which, Individuals are not permitted to prosecute the recovery of their rights.

By law also there is no prescribed form for an opposition *afin de conserver*, it is sufficient that it contain the legal grounds necessary for its validity, and no evidence of the facts on which it is founded need be produced or filed at the time it is made: nevertheless the Court by the 7th and 9th articles of the 12th section of the said Rules not only prescribes a set form in which such opposition must be made, the slightest deviation from which would render the opposition null and void, but also requires for its validity the exhibition of written evidence or the depositions of witnesses, or an affidavit of the party, (the taking of which is not authorised by Law) to prove the truth of its contents. The said Rules are in the words following. “ That any opposition made without the ministry of an Attorney of this Court, which shall not contain an Election of a *domicile* on the part of the *opposant* at some House within the Limits of the City of Quebec under the signature or signatures of the person or persons by whom such opposition shall be made, shall not be received or filed; which Election shall be in the form prescribed in the Appendix to these Rules and orders, under the number 78, and all pleadings, Notice, Rules, Judgments and other proceeding which pending such opposition shall thereto relate and be served at the Domicile thereby Elected shall be held and taken to be well and sufficiently served upon the person or persons by whom such Domicile shall be so Elected “ 12th Sect. Art. 6.” That every opposition *afin de conserver* shall be in the form prescribed in the Appendix to these rules and orders under the number 79. and that an opposition, *afin de conserver*, in any other form shall not be received or filed.” (Sect. 12. Art. 7.)

“ That



“ That with every opposition *afin de conserver* shall be filed all *preuves litterales* to be adduced in support thereof, and the deposition of  
 “ all witnesses, whose testimony may be necessary for the support of  
 “ such opposition, and may legally be received in proof thereof, and in  
 “ default of such deposition an affidavit of the party, by whom such  
 “ opposition shall be made, in the form prescribed in the appendix to  
 “ these rules and orders under the number 80, duly sworn before one  
 “ of the Justices of this Court or some Commissioner duly authorised to  
 “ take and make affidavits to be read and used in this Court ; and that  
 “ to every opposition shall be annexed, a list of all exhibits, thereby re-  
 “ quired and therewith filed, under the signature of the Attorney *ad*  
 “ *litem*, or other person, or persons by whom such opposition shall be  
 “ made.”

Your Committee are of opinion that the said last mentioned Rules, are repugnant and contrary to Law, are arbitrary and imply the assumption of Legislative power, and impose unreasonable and unjust restraints upon his Majesty's subjects in the exercise of their legal rights.

Your Committee have already noticed instances in which the Court has exercised the power of prescribing the Language to be used by parties who require justice at its hands, but there are many other instances of a similar exercise of power, and indeed a considerable part of the Rules consists of Regulations by which a set form of words is prescribed for pleadings, notices, motions and the most trivial papers that proceed from the hands of an Attorney. Such is the minuteness to which the Court has descended in this particular, that the words, letters, and figures, of which a common appearance is to be composed, are authoritatively prescribed, and no equivalents are permitted. These forms, for the most part, contain nothing of the substantial part of pleading, being composed of scraps for the intituling of papers, the beginnings and conclusions of them. And it has been a matter of surprise to your Committee that the Court could have deemed it consistent with its dignity, or its more important avocations, to engage in the task of framing formulæ so insignificant and useless.

If these forms had been merely recommended to the use of the profession, no injury would have arisen to the public, and your Committee  
 would

would not have deemed it necessary to notice them, but the greatest importance is to be attached to them when it is considered, that a verbal and perhaps even literal conformity with them is by these Rules made necessary for the attainment of Justice, and the most important rights may be rendered unavailing and lost by a deviation from them.

Your Committee, without appreciating the merits or demerits of the forms in general, are bound to express their opinion of the authority which has been exercised in prescribing them.—No system of Laws requires less technical form than the laws of this Province, and in no instance are specific forms required or necessary in Judicial proceedings; it is sufficient that the pleadings and papers that are exhibited contain the facts or matter necessary to entitle the Party to what he demands; nothing beyond this is required. Your Committee are therefore of opinion, that all the regulations in the said Rules, whereby specific forms are prescribed to parties in a cause, or their Attornies, are illegal and arbitrary, are highly prejudicial to the interests of his Majesty's Subjects, and calculated to defeat, in many cases, their just and legal rights.

In proceeding to examine the Rules of the Court of King's Bench for the District of Montreal, your Committee will, in the first place, notice generally, without entering into detail, various illegal Regulations, highly injurious to the Rights of his Majesty's Subjects, which have evidently been copied from the Rules of the Court of King's Bench at Quebec, upon which your Committee have already submitted their opinion, and they will afterwards point out the Rules peculiar to the Court at Montreal, on which it is their duty to report their opinion.

The instances of Regulations similar to those at Quebec, are the following:

1st. The Court at Montreal has arrogated to itself the same power, as that at Quebec, to make Rules of the nature of Penal Laws, by declaring, prospectively, that a non compliance with certain of its Rules, shall constitute the crime of Contempt.

2d. The Court at Montreal has extended the power and duties of Attornies, in respect of the concerns of the persons by whom they have been employed, beyond the limits determined by law.

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3d. The Court at Montreal, in imitation of the Court of Appeals and of the Court of King's Bench at Quebec, has made deposits of certain sums of money, conditions precedent to the exercise of legal rights, by declaring that no Exception *Declatoire* (Plea to the Jurisdiction *à la forme*, or *dilatoire*, shall be received without a previous deposit of Two Guineas, and by requiring a previous deposit of fees to entitle a party to the benefit of a Trial by Jury.

4th. The Court at Montreal, in imitation of that at Quebec, has attempted to alter the law of *Peremption*, and has established a new Rule of *Prescription* with respect to suits, by declaring that the neglect of the Plaintiff during two Terms, to proceed in his Cause, shall occasion the dismissal of it, on motion of the Defendant; and if the Defendant do not ask for the dismissal of the Action, the Court is to exercise the same "*ex officio*" authority as the Court at Quebec, by dismissing it of its own accord, *ex mero motu*.

But the Court at Montreal has outstripped the Court at Quebec in prescribing limits to the Rights of his Majesty's Subjects.

By the Rules of both Courts, a suspension of proceedings in a Cause for a very short time, is fatal to the Plaintiff; but the Court at Montreal has even rendered the most diligent and uninterrupted prosecution of the Plaintiff's Rights insufficient to secure to him the benefit of the Laws of his Country, by the following most extraordinary regulation:

" And inasmuch as every Plaintiff or Demandant should be bound to  
 " prosecute his Claim within a reasonable time to a final conclu-  
 " sion, it is ordered that no cause shall remain on the Records of  
 " the Court for the purpose of any further proceedings therein  
 " being had, after twelve Terms from the institution of such Ac-  
 " tion or demand (of which the Term in which the same was insti-  
 " tuted shall be accounted one) unless sufficient cause be shewn to the  
 " contrary; and that either party interested in the cause, may on the  
 " first day of the thirteenth Term, or at any other subsequent period,  
 " move for a Judgment declaring an absolute "*Peremption*" in the  
 " said Cause, and dismissing the same as aforesaid, or this Court *ex*  
 " *officio*, upon the Certificate of the Prothonotary that the said Cause  
 " has been entered in this Court during twelve Terms as aforesaid,  
 " will

" will dismiss such Cause, and adjudge an absolute "*Peremption*" of " the same, with Costs."

By this extravagant stretch of authority, the Court at Montreal has assumed to itself a discretionary Power of determining the duration of a suit at Law and altho twelve Terms are allowed by this Rule for bringing it to a conclusion, whatever the nature of the proceedings may be, and whatever causes of delay may occur, even this period of time may at the pleasure of the Court (if this exercise of its Power be acquiesced in) be still further abridged, and the right to legal remedies in the Court at Montreal become merely nominal.

Your Committee are of opinion that the said last mentioned Rule is illegal, arbitrary and destructive of the most important rights of His Majesty's Subjects, and that in making it the Court has committed a most unjustifiable usurpation and abuse of authority.

By the Provincial Ordinance 25 Geo. III. c. 11. for regulating the proceedings in the Courts of Civil Judicature, the mode of prosecuting demands in the Courts is prescribed, and the service of a Writ of Summons and declaration on the Defendant is necessary to render the Defendant amenable to their Jurisdiction and enable them to take cognizance of the Plaintiff's demand. Nevertheless, the Court at Montreal, in defiance of this Law, has prescribed a different course to be pursued in certain cases, by declaring, " that every Barrister, Advocate, " or Attorney, who may be in practice in this Court, and not have absented himself for twelve months, and all the several Officers of the " Court shall respectively be held and considered as personally present " to answer every legal claim, suit and demand, that may be preferred " against either of them by any person whomsoever, and shall be bound " to answer the same, without the service of the process of summons " requiring an appearance to answer any such demand; the course of " proceedings being in every other respect conformed to according to " the General Rules of Practice." (Sect. 7. Art. 8.)

Your Committee are of opinion, that the said last mentioned rule hath been made contrary to law and is arbitrary, and implies the assumption of legislative authority.

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By the Provincial Ordinance of 25 Geo. III. C. 2. Art. 4. a creditor is entitled to a *Capias ad respondendum*, or attachment against the body of his debtor, upon an affidavit "That the defendant is personally indebted to the plaintiff in a sum exceeding ten pounds sterling, and that the defendant is immediately about to leave the Province, &c." Under this Ordinance it has always been considered that the right to an attachment against the body is given only when a debt to the amount specified in the Ordinance is due, and that it cannot be obtained on demands for unliquidated damages; nevertheless, the Court at Montreal has made the following Rule: "It is ordered that in every case where a plaintiff may under any special circumstances of costs, trespass, or personal injuries to him done by the defendant, apply for a *Capias ad respondendum*, to hold such defendant to special bail in the due course of proceedings thereupon, he shall by his affidavit in that respect to be made, over and above swearing to a precise amount of damages sustained, be bound in the said affidavit fully to state the several grounds and circumstances of such costs or personal injuries and damages, in order that the Judge taking such affidavit may, in his discretion, make such order for bail as to him may appear reasonable from the circumstances of facts deposed in such affidavit, whether for the sum so deposed to or any lesser sum, if any such order for bail may be reasonable to be made thereon, and without such special grounds to be stated as aforesaid, that no Writ of *Capias ad respondendum* as aforesaid, for costs or personal injuries, be granted or awarded."

By this Regulation, contrary in the opinion of your Committee to the said Ordinance, the right to an attachment against the body, on a demand for unliquidated damages, is recognized. This right so recognized, is at the same time shackled with new restrictions, and your Committee have remarked with surprise that an affidavit of a specific sum of damages is required, and at the same time a discretionary power is given to the Judge to fix the amount for which bail is to be taken at any lesser sum which he may think fit. Your Committee are of opinion that the said Regulation is illegal and arbitrary, and implies the assumption of legislative authority.

By law, persons entitled to writs of attachment known by the names of *Saisie-Revendication*, and *Saisie-Arrêt*, may sue out the same and  
cause

cause them to be executed, without any pecuniary deposit in the hands of the Sheriff, to whom the law has given a special lien or privilege on the effects he may attach under such process, in virtue of which he is entitled to retain them till the expences incurred in consequence of the seizure of them be paid. Nevertheless, the Court at Montreal has made the following Rule: "Whereas the execution of Writs of *Saisie Revendication* or *Saisie Arrêt*, in the hands of the defendant, are frequently attended with unreasonable charges upon the Sheriff's office and duty, and might be highly prejudicial to the rights of persons in the legal possession of chattels and effects so seized; It is ordered that every plaintiff suing out such writ shall be bound, upon the delivery of any such process to the Sheriff, to make and deliver to the Sheriff sufficient advances in money for the necessary expences in the execution of every such writ, or otherwise satisfy and secure the Sheriff for the prompt payment thereof: and failing so to do, the Sheriff may refuse to receive the said writ, or to proceed in the execution of the same, and that in every case where the Sheriff may execute such writ, his recourse for the payment respecting the service of such writ, and the advances to guardian or record, shall be against the plaintiff personally, and not upon the goods which may be attached." (Sec. 36. Art. 8.)

It must be remarked with surprise, that the provisions of law are not only set aside by this regulation, but a discretionary power is given to the Sheriff to ask what sum of money he pleases as the condition upon which he will execute, or even receive, the King's Writ, and it is thus made to depend on his will and pleasure whether an injured man shall have the remedies given him by law.

Your Committee are of opinion, that the said last mentioned regulation is illegal and arbitrary, and a gross violation of the rights of the subject, and implies the assumption of legislative authority.

The law of Canada, at the same time that it provides remedies for creditors, has so regulated the exercise of them as to preclude injury or injustice in enforcing them, and the wisdom of its provisions respecting the remedy by *Saisie Arrêt*, cannot be called in question. Nevertheless, the Court at Montreal has taken upon itself to supply supposed deficiencies,

deficiencies, and make corrections of the law on that head, by the following Rule : " Whereas under the present course of practice, it may happen that upon the service of a *Saisie Arrêt* at the *dernier domicile* of the *Saisi*, duly certified, final judgment may be made against the *Tiers Saisi* for the principal debt due to the plaintiff, although the *Tiers Saisi* may never have received the Writ of *Saisie*, nor have had such reasonable knowledge of the same, as under the peculiar circumstance of his situation he was enabled to appear thereupon, and make his declaration conformable to law ; in order, therefore, to prevent the manifest injustice that may be done by such conclusive judgment ; It is ordered, that in future no conclusive or final judgment shall be made against the *Tiers Saisi* for payment of the plaintiff's debt by reason of his non-attendance and answer as aforesaid, unless it shall appear that the service of such *Saisie Arrêt* and notice had been personally made to and upon the *Tiers Saisi* ; and that in every other case of legal services at the *domicile*, the judgment to be awarded against a *Tiers Saisi*, in default, will be provisional, admitting such *Tiers Saisi* to appear at a future day and take off such default, and make answer to the *Saisie* or attachment, or shew cause upon the irregularity of the service of such writ." (Sect. 39 )

It would appear from this as well as other Rules, that the Court at Montreal knows no bounds to its authority, and that imaginary inconveniencies and defects will induce it to exercise a Legislative Authority, and your Committee must express their opinion, that in this, as well as in the many preceding instances, the Court at Montreal has arrogated to itself powers which belong to the Legislature only, and that the said last mentioned Regulation is altogether illegal.

Your Committee apprehend it is not the business of the Courts of Justice to prescribe to parties the grounds and language they are to adopt in their pleadings, but to determine upon the sufficiency and effect of pleadings after they come before them, nor can they without violating the principles of law and reason, compel parties to make statements and admissions in their pleadings, and exhibit evidence, contrary to their interests. Your Committee feel themselves therefore, called upon to notice two extraordinary Rules of the Court at Montreal with respect to pleadings, by which such Regulations are made.

By

By the first, it is declared, " whereas actions are frequently instituted, and declarations thereupon framed conformable to actions in England, of assumpsit with general counts therein contained, for grois S<sup>ms</sup> thereby claimed, without stating in such declarations what part thereof may have been paid, or should not reasonably be claimed by, or adjudged to the Plaintiff and to which actions general pleas of non assumpsit have been made, and various grounds of defence thereupon raised, and claims made of evidence to be adduced, that could not have been foreseen by the Plaintiff, under such general pleas, and which may be highly prejudicial to the the parties, it is therefore ordered that on any such actions the Plaintiff shall generally state all such deductions from the grois Sums claimed, as may be in his knowledge, and shall, by his demand, declare and claim the precise balance, or monies due by the reason of such assumpsit, undertaking or promise as aforesaid, and for recovery of which the defendant may be sued and that on the return day in such action, the Plaintiff shall file an exhibit, stating the precise amount of his demand, and in such statement, shall insert and set down all matters that may have been received, whether in money or other valuable thing which ought to be deducted from the grois amount of such general demand as aforesaid, and upon which exhibit shall be written a notice to the Defendant of the precise amount of the Plaintiff's claim, and for recovery of which the Defendant is prosecuted in the said action, and failing so to do, the Defendant shall not be bound to answer the Plaintiff's demand, or be adjudged in default on the notice aforesaid, and that every plea to any such action of assumpsit shall contain the specific grounds of defence upon which the Defendant may intend to adduce evidence in support of any matter to be offered against the Plaintiff's demand, and that no evidence, verbal or written, shall be received in any such action, but upon and in support of such special matters alleged in defence, and that may have direct relation thereto, and the Plaintiff's demand " (43 Sect.) By the second of the rules above referred to, it is declared, " whereas the practice of filing general pleas upon plain demands under an *Acte authentique*, which require no evidence on the part of the Plaintiff, and the Defendant under such general plea demanding a right of *enquête* or proof, has been attended with great delays; it is ordered, that whensoever a Plaintiff may prosecute an action upon an

" *Acte*



“ *Acte authentique*, and upon which action no verbal testimony may be  
 “ requisite to support the Plaintiff's demand, that every plea to the  
 “ merits of the Plaintiff's action shall contain specific grounds to be  
 “ set up in proof, to lessen, exonerate and discharge the defendant  
 “ from such demand, and upon which special grounds of evidence  
 “ may be legally adduced, and that failing such specific grounds of  
 “ defence, the Plaintiff may of right set down the Cause on the  
 “ Diary or *Rôle de droit* for hearing and judgment on the merits,  
 “ without proceeding to set down the cause on the Diary or *Rôle d'En-*  
 “ *quête* for proof, previous to such hearing on the merits.” (Sect xi.)

Your Committee are of opinion that the said last mentioned regulations are contrary to the principles which ought to govern the administration of Justice, and are illegal and arbitrary and imply the assumption of Legislative authority.

In the Rules of the said Court of Montreal there are various regulations upon the subject of Bail, by which that Court, in the opinion of your Committee hath exercised legislative authority, and the legal obligations resulting from the Bail Bond to the Sheriff, are thereby modified and in some cases even cancelled.

By the Provincial Statute 41st Geo. III. Chap. 2. Sec. 2. it is enacted, “ That in all actions oppositions and suits, prosecuted before the  
 “ Courts of Civil Jurisdiction in this province, by any person or persons residing without the province, whether such person or persons be subjects of His Majesty or not, the Defendant or Defendants, or others concerned may demand and obtain good and sufficient security at the discretion of the said Court for the payment of  
 “ their costs, in case the Plaintiffs or prosecutors should fail in such  
 “ their said actions oppositions or other suits, and all proceedings shall  
 “ be staid and suspended, until such security shall have been offered  
 “ and received.”

Without regard for this positive enactment of the Legislature, the Court at Montreal preferring its own Wisdom to that of the Legislature and in contempt of its authority has made Regulations totally different and repugnant to the said Law, by declaring “ That where any  
 “ person

“ person not resident within this province may prosecute any original  
 “ or incidental demand or claim, by intervention and opposition, he  
 “ shall be bound within two days after the same may be entered in  
 “ Court to give security for costs if a motion may be made for that  
 “ purpose to answer the opposite party’s Costs, if such plaintiff or  
 “ claimant, should fail to make good his demand; and that every party  
 “ legally entitled so to move shall obtain as of right an order for se-  
 “ curity being duly entered within two days after such motion, and on  
 “ failure thereof that the action, claim, demand, or opposition afore-  
 “ said shall be dismissed with costs.”

“ And it is further ordered that every person who may be entitled to  
 “ such security for costs, shall be bound to move therefor within the  
 “ period of four days from the entry of the action or claim aforesaid  
 “ otherwise he shall be held and considered as having waved and  
 “ relinquished his right to security for Costs as aforesaid “ (Sect. 9.  
 “ Art. 1. 2 and 3.)

These regulations contravene the said Statute in the following points.  
 1st The statute limits no time within which security for Costs is to  
 be given, whereas the Court has fixed the short limitation of two days.

2nd. The statute subjects the plaintiff non resident to a suspension  
 of proceedings in his cause till he give security for costs, whereas the  
 Court at Montreal subjects him to the loss of his action if he do not  
 give security within the time it prescribes — 3d. The statute limits no  
 time within which the Defendant is to move for security for costs, whe-  
 reas the Court compels him to move for it within four days, and in de-  
 fault of his doing so deprives him of the right altogether.

Your Committee are therefore of opinion that the said last mentioned  
 Regulations are manifestly contrary to law and have been made in de-  
 fiance of the authority of the Legislature.

By the provincial ordinance of 25th Geo. III. Cap. 2d. Art. 12.  
 either party in a cause may obtain the examination of a Witness about  
 to leave the province upon an affidavit required for that purpose and this  
 right it has been determined and admitted belongs to either party as  
 well before as after issue joined:

E

Never-

Nevertheless the Court at Montreal has laid restraints and restrictions on this right by declaring " That no examination of any witness  
 " about to depart the province shall be had or taken in any cause during  
 " any Term or sitting of this Court, unless issue be joined on the me-  
 " rits or matters of fact in controversy between the parties, the exami-  
 " nation of a party on *faits et articles* as provided by the Rules of  
 " Practice excepted."

" Nor shall any such examination of a witness about to depart the  
 " province be heard or taken in any cause on the part of the Defendant  
 " where by the Rules of Practice such Defendant ought to have pleaded  
 " to the merits and hath not done so. Nor shall any such examination  
 " of a witness, be had or taken on the part of the plaintiff, where by the  
 " Rules of Practice he should have replied to the Defendants Plea or  
 " taken issue on the merits and hath not so done previous to his appli-  
 " cation for the examination of a witness as aforesaid." (27th Sect.  
 Art. 5 and 6.

Your Committee are of opinion that the said last mentioned Regula-  
 tions are repugnant to the said article of the provincial ordinance last  
 cited and are illegal and arbitrary and imply the assumption of Legisla-  
 tive authority.

By the 21st Art. of the 22d title of the ordinance of 1667 being part  
 of the Law of this province, parties are prohibited from examining  
 more than ten witnesses to one fact, on pain of bearing the expences at-  
 tending the examination of a larger number even tho' the costs be finally  
 awarded to them. The words of the ordinance are "*Défendons aux*  
 "*parties de faire ouir en matière civile plus de dix Témoins sur un même*  
 "*fait, et aux Juges ou Commissaires d'en entendre un plus grand nom-*  
 "*bre: autrement la partie ne pourra prétendre le remboursement des frais*  
 "*qu'elle aura avancé pour les faire ouir, encore que tous les dépens du*  
 "*procès lui soient adjugés en fin de cause.*"

Notwithstanding this law, the Court at Montreal has made the fol-  
 lowing regulations " the Court having taken into consideration the a-  
 " bufes that are liable to be committed by the allowance for the subpœ-  
 " naing and attendance of any unlimited number of witnesses whatsoever  
 " in

“ in causes brought to issue in this Court; It is ordered that from and  
 “ after this day in any cause wherein witnesses shall be subpoenaed to  
 “ appear and give evidence in this Court, no allowance whatever on  
 “ the taxation of costs in favor of the one party against the other shall be  
 “ made for subpoenaing and attendance of more than six witnesses (if so  
 “ many there shall be) for each issue that may be properly joined be-  
 “ tween the parties, should there be more than one in any cause.”

“ And whereas by the Rules of Practice no party in any cause hath a  
 “ right to tax costs against an opposite party for the examination of more  
 “ than six witnesses upon any issue raised in such Cause; yet the opposite  
 “ party is frequently put to charges & expences in respect to the exami-  
 “ nation of witnesses above the number allowed, it is therefore ordered,  
 “ that no further examination of witnesses above the number of six as  
 “ aforesaid shall take place, unless the party moving for the same do first  
 “ tender and pay to the Attorney of the opposite party six shillings and  
 “ eight pence costs upon each witness so to be examined above the  
 “ number aforesaid. Nor shall any costs be taxed to any Attorney, as  
 “ between Attorney and Client, for the examination of a greater num-  
 “ ber than six witnesses, on any issue as aforesaid” (Sect. 27, Art. I and  
 28.)

Your Committee are of opinion that the said last mentioned regula-  
 tions are evidently contrary to law and reason, and inconsistent with the  
 first duties of a Court of Justice, and impose restrictions, restraints and  
 burthens upon His Majesty's Subjects, in the prosecution and defence  
 of their rights, whereby the attainment of Justice may in many cases be  
 impeded or altogether prevented.

Among the regulations of the Court at Montreal is a rule by which  
 parties who make demands in that Court, are in certain cases exemp-  
 ted from any proof at all in support of them. The Rule is in the fol-  
 lowing words “ whereas it frequently happens that in causes where it  
 “ appears that the Defendant is in a state of *Decomfiture*, motions are  
 “ made and orders granted for calling in the several Creditors of such  
 “ Debtor to appear in the said cause, and attest their respective claims  
 “ upon the effects and estate of the said Debtor previous to a distribution  
 “ of the same : it is ordered that the Plaintiff or Defendant, or any one

" of the Creditors of such Debtor may object to any claim which may  
 " be made in consequence of any advertisement and public notice as  
 " aforesaid, and controvert and oppose the same, provided such Plaintiff  
 " or Defendant or any such Creditor as aforesaid shall, within the space  
 " of ten days after the filing such claim, file his opposition thereto,  
 " and if the Claimant may reside in this City, or have a domicile therein,  
 " give notice to the claimant of such opposition, and require the said  
 " claimant to support the same before this Court by such legal course as  
 " is observed in the support of claims or opposition, and it is further or-  
 " dered that every claim made in consequence of any public notice as  
 " aforesaid, by any person residing in this City, or who may have elected  
 " a domicile therein, and such election of domicile be entered of record  
 " with the claim aforesaid, and which may not be opposed as aforesaid,  
 " shall be considered and held to be admitted by all the parties interest-  
 " ed thereupon, as legal and just, and as such adjudged by this Court  
 " upon the distribution of any debtors effects and estates as aforesaid,  
 " and it is further ordered that the above Rules shall apply and be con-  
 " sidered as binding whenever creditors of any deceased person may by  
 " public notice be called before the Court to assert their respective cre-  
 " dits upon the effects and estate of such deceased person ; that the pre-  
 " sent Rule shall be held also to extend to all claims made by opposition  
 " *à fin de conserver*, upon monies levied and returned by the Sheriff on  
 " any writ of execution sued out from this Court."

The course of proceedings upon oppositions and interventions or claims, as they are called in this Rule, has always been similar to that in original actions, and both law and reason concur in requiring proof to substantiate demands before they are allowed.

Your Committee are of opinion that the said Rule is illegal, arbitrary and unjust, and implies the assumption of legislative authority.

The Court at Montreal has not only by its authority superseded in certain cases the necessity of proof required by law, but it has also altered the mode of receiving it in the most essential point, its publicity, by transferring the adduction of it from the open Court to a private chamber, there to be received in secrecy, and this in direct contradiction to the Statute Law of the Province.

By

By the Provincial Ordinance of the 25th Geo. III. Chap. 2. Art. xi. for regulating the proceedings in the Courts of Civil judicature, it is enacted, that in all causes not tried by a Jury, and where the trial "is to be by the deposition of witnesses, and by proof, as at present used in His Majesty's said Courts of Common Pleas, the Court shall, after issue joined on the merits of the cause, in the manner as hereafter expressed, appoint a day for hearing the evidence of the parties, plaintiff and defendant, and cause the same to be taken down in writing by the Clerk of the Court, *in open Court*, and signed and sworn to by each respective witness, save and except as hereafter provided for, witnesses absent by reasons of sickness, or of departing the Province."

In requiring that the proceedings of His Majesty's Courts should be public, and evidence taken in *open Court*, this law sanctioned what had been previously the practice of the Courts under the English dominion, and, until the making of the Rule referred to, the depositions of witnesses, and the examination of parties on interrogatories (*Faits et Articles*) had always been taken in open Court, in the presence of the Parties or of their Attornies. Nevertheless the Court at Montreal on the 20th April, 1811, published the following Rule. "It is ordered that the answers to the interrogatories of every party to be examined on *Faits et Articles*, shall be received and ingrossed by one of the Prothonotaries of this Court, from the Declaration of the examinant, and not in the presence of any adverse party, nor in the presence of any Attorney of either of the parties in the cause; and the said answers, when so engrossed, shall be brought into this Court, (or before the Judges sitting in vacation, when such examination may be appointed to be taken in vacation,) there to be received upon the oath of the party to be examined and not otherwise." (Sect. 29.)

Your Committee are of opinion that this rule has been made in manifest violation of the said Ordinance, is contrary to the principles which ought to govern the administration of Justice, might in many cases be destructive of the most important rights of individuals, and is a most dangerous and arbitrary innovation in the proceedings of His Majesty's Courts.

By

By the 1st art. of the 31st, title of the Ordinance of 1667, an obligation is imperatively laid on all Courts of Justice, to make the awarding of Costs a consequence of success in all Judicial Proceedings, and all discretionary power over costs is taken from the Courts, "*toute partie, (says this Law,) principale ou intervenante qui succombera &c. sera condamnée aux dépens indéfiniment sans que sous prétexte d'équité partage d'avis ou pour que qu'autre cause que ce soit, elle en puisse être déchargée*" And afterwards, "*voulons (continues this Law,) qu'ils, (les dépens,) soient taxés en vertu de notre présente Ordonnance au profit de celui qui aura obtenu définitivement, encore qu'ils n'eussent pas été adjugés, sans qu'ils puissent être modérés, liquidés ni réservés.*"

By the Provincial Statute of the 41st, Geo. III, c. 7, Sect. 17, it is enacted "that the Courts of Criminal and Civil Jurisdiction, within this Province, shall have power and authority within their respective Jurisdiction, to make a table of fees for the officers of the said Court, the which table the said Courts of Justice may alter and correct from time to time, as they shall see necessary : and the said officers of the said Courts respectively are hereby directed to conform to the same."

Altho' under the first of these Laws, parties are intitled to recover from their adversaries the costs of the Judicial Proceedings, in which they have been successful, and altho' in virtue of the second, tables of fees have been framed to regulate in all cases the amount of such costs, according to the nature of the services performed, and altho' both parties and Attornies have an unquestionable legal right to receive the costs to which they are legally intitled, according to the scale of allowance established by the tables of fees, nevertheless the Court at Montreal, in violation of both those laws and of the rights of parties and Attornies, published the following Rule on the 9th April, 1812, "It is ordered that no general rule of this Court, granting fees upon certain business to be performed in causes therein instituted, shall, in any manner, be considered to extend, to limit or restrain any judgement, or order of this Court, upon any matter before it, wherein the Court upon the circumstances of such matters or business shall award and adjudge a specific sum to any party thereupon, and any such particular order or judgement for costs that may be made, shall determine and conclude the rights of every person therein interested ; and it is further  
"ther

"ther ordered that no general allowance of fees, by any Tariff or rule of this Court shall be considered as granting a right to such fees for any business performed whenever this Court, or any Judge thereof, upon the taxation of Costs shall not consider such business to have been regularly and necessarily performed." (Section 40 )

Your Committee are of opinion, that the said last mentioned Regulation is altogether illegal and arbitrary, and designed to vest in the Judges a discretionary power inconsistent with law and justice, and manifestly tending to the oppression of his Majesty's Subjects.

By the Provincial Statute 20 Geo. III. c. 2. Art. 38, Imprisonment of Debtors for the satisfaction of Judgments in certain cases is permitted, and it is provided, that upon affidavit of the debtor, that he is not worth Ten Pounds, the Plaintiff shall pay to the Defendant for his maintenance, &c. 3s. 6d. per week, or an increased allowance, not exceeding five shillings in time of scarcity, and it is enacted, " that such payment shall be made in advance on Monday in every week, in failure of which, the Court from whence the execution issued shall order the Defendant to be released."

Under this law, the Creditor satisfies the obligation imposed on him, by paying the allowance to his Debtor in the course of *Monday* in every week. The Court at Montreal have thought proper to lay down a different Regulation, by giving the Creditor only *part* of the day instead of the *whole*, allowed by law, to make the payment required of him. The words of this Rule, which was published on the 20th April 1812, are, " It is ordered that in future, every alimentary pension to be allowed to Debtors in Gaol shall be made on each Monday on or before *Twelve o'clock in the forenoon*." (Sect 42 )

Your Committee are of opinion, that the said Rule is evidently contrary to the said Ordinance, and implies the assumption of Legislative Authority.

Your Committee will here conclude the specification of the principal Rules of the said Courts, which, in their opinion, are repugnant and contrary to law. The innovations which have been made by these  
Rules



Rules in the Laws of the Country are so numerous and important, the authority they attribute to the Courts so arbitrary and despotic, and many of them are calculated to produce such injurious consequences, that your Committee are of opinion, that while these Rules are acted upon, and the principles which dictated them influence the Courts of Justice, his Majesty's Subjects in this Province will not enjoy the benefits of their Constitution or Laws, their Rights will cease to be secure under the protection of the Laws and depend altogether upon the fluctuating will of the Judges. The Rules of decision will vary with the Tribunals that are resorted to; what is deemed law at Quebec, will not be so at Montreal, and what has been determined to be Law at both places on one day will, at the pleasure of the Judges, cease to be so on the following day.—Hence an universal uncertainty in Civil rights will be produced with all the evil consequences thence arising.

Your Committee are the more strongly urged to express this opinion of the evils to be apprehended, as the Court of last resort in this province, from the peculiarity of its constitution, is not likely to obviate or mitigate these evils.—The Chief Justice of the province and the Chief Justice of the King's Bench at Montreal preside in that Court, in appeals from the Courts of Original Jurisdiction in which they also respectively preside as Chief Justices. Both these Gentlemen concurred in framing the Rules of Practice of the Court of Appeals, by which the first encroachments on the Legislative authority were made, and they have since exercised in their respective Courts the powers assumed by the Court of Appeals—No corrective therefore, can be expected in the latter Court. It is from the constitutional measures to be adopted by the Assembly of Lower Canada only, that correction of present abuses and security against the renewal of them in future can be expected.

Upon the aforesaid Rules of Practice, your Committee have come to the following Resolutions :

**RESOLVED**, that it is the opinion of this Committee, that the Eighth Section of the Rules of Practice of the Court of Appeals, whereby the deposit of a sum of Money not required by law, is made necessary to entitle a Party to a Writ of Appeal, is illegal and arbitrary, and of the most dangerous example; and that the said Court hath thereby assumed Legislative authority.

Rs.

- RESOLVED, that it is the opinion of this Committee, that the Thirtieth Section of the Rules of Practice of the said Court of Appeals, whereby the right of Appeal from an Interlocutory Judgment is barred, unless moved for within the time prescribed by the Court, is illegal, arbitrary & destructive of the Rights of His Majesty's Subjects, and that the said Court hath thereby assumed Legislative Authority.
- RESOLVED, that it is the opinion of this Committee, that the Ninth Section of the Rules of Practice of the Court of Appeals, in so far as it makes a Writ of Appeal returnable out of Term, is illegal and arbitrary, and that the said Court hath thereby assumed Legislative Authority.
- RESOLVED, that it is the opinion of this Committee, that the Tenth Section of the Rules of Practice of the Court of Appeals, whereby a Prothonotary by not making a return as therein mentioned, is rendered guilty of a contempt, is illegal and arbitrary, and that the said Court hath thereby assumed Legislative Authority.
- RESOLVED, that it is the opinion of this Committee, that the Thirteenth Section of the Rules of Practice of the Court of Appeals, whereby the Service of a Writ of Appeal upon a person who has been Attorney, *ad litem* and on an Attorney *ad negotia* is declared valid, is illegal and arbitrary, and that the said Court hath thereby assumed Legislative Authority.
- RESOLVED, that it is the opinion of this Committee, that the Sixteenth, Seventeenth, Eighteenth and Nineteenth Rules of Practice of the Court of Appeals, whereby regulations are made relatively to the fying of reasons of Appeal and Answers, are illegal and arbitrary, and that the said Court hath thereby assumed Legislative Authority, and hath attributed to itself a most dangerous power of making Orders and Judgments *ex officio* as it is called, inconsistent with its Judicial functions, and amounting to a denial of Justice.
- RESOLVED, that it is the opinion of this Committee, that the Twenty-first Section of the Rules of Practice of the Court of Appeals, whereby the power of dismissing *ex officio* appeals in which cases have not been fyled within Ten Days, and of excluding Respondents who have not fyled cases within that time, from the benefit of a hearing, is attributed to the Court, is illegal and arbitrary, of most dangerous tendency, and amounts to a denial of Justice, and that the Court hath thereby assumed Legislative Authority.
- RESOLVED, that it is the opinion of this Committee, that the Twenty-fourth and Twenty-sixth Sections of the Rules of Practice of the Court of Appeals, whereby the Clerk of that Court, without the consent, privity, or knowledge of either of the Parties in a cause, is required to fix the cause for hearing, and whereby the Court attributes to itself the power of dismissing *ex officio* appeals so fixed for hearing, even tho' both parties should be absent, is illegal and arbitrary, and amounts to a denial of Justice, and that the Court hath thereby assumed Legislative Authority.

RESOLVED, that it is the opinion of this Committee, that the Fourth Art. of the Second Section of the Rules of Practice of the Court of King's Bench at Quebec, whereby Barristers and Attornies are rendered guilty of a contempt, and suspended for non-payment of fees, is arbitrary and illegal, unjust and oppressive, and that the said Court hath thereby assumed Legislative Authority.

RESOLVED, that it is the opinion of this Committee, that the 1st. Art. of the Third Section of the said last mentioned Rules, whereby a general enactment of the crime of contempt for a breach of any of the said Rules is made, is illegal, arbitrary, and oppressive in the highest degree, and the said Court hath thereby assumed Legislative Authority.

RESOLVED, that it is the opinion of this Committee, that the Second Article of the Third Section of the said last mentioned Rules, whereby points of Practice are not permitted to be re-argued, is illegal and arbitrary, and calculated to prevent the fair and open discussion of litigated points in the said Court.

RESOLVED, that it is the opinion of this Committee, that certain Regulations in the said Rules of Practice, contained in the Eleventh and Fourteenth Articles of the Second Section of the said Rules, whereby the legal mode of proceeding when the Attorney of one of the Parties in a cause dies, is dispensed with, and a different mode prescribed, and whereby the powers and duties of an Attorney are continued after final Judgment in all matters collateral and incidental to the Suit, are illegal and arbitrary, and that the said Court hath thereby assumed Legislative Authority.

RESOLVED, that it is the opinion of this Committee, that the Sixteenth and Nineteenth Articles of the Third Section of the said Rules, which, contrary to the Law of the Land, establish a new rule of prescription, whereby the Plaintiff incurs the loss of his cause, by not proceeding during one Term, if the Defendant moves to that effect, and whereby the power of dismissing a cause *ex officio* after two Terms, is attributed to the Court, are illegal and arbitrary, are subversive of the just and legal Rights of His Majesty's Subjects, are of most dangerous and injurious tendency, and amount to a denial of Justice, and that the said Court hath thereby assumed Legislative Authority.

RESOLVED, That it is the opinion of this Committee, that the Tenth Section of the said last mentioned Rules, whereby a previous deposit of Money is required to entitle a Defendant to the exercise of his legal right of filing exceptions "*declatoire*" (Plea to the Jurisdiction) "*Peremptoire à la forme*," and "*dilatoire*," is illegal and arbitrary, may enable the Court to exercise Jurisdiction contrary to Law, and deprive His Majesty's Subjects of the means of defence, is of most dangerous and injurious tendency, and amounts to a denial of Justice, and that the said Court hath thereby exercised Legislative Authority.

RESOLVED, that it is the opinion of this Committee, that the Fourth Article of the  
Eleventh

Eleventh Section of the said Rules, whereby a deposit of Money is required to entitle a party to the benefit of a trial by Jury, is illegal and arbitrary, of most dangerous tendency, and amounts to a denial of Justice, and that the said Court hath thereby assumed Legislative Authority.

RESOLVED, that it is the opinion of this Committee, that in the said Rules, Regulations of a Legislative nature, as to proceedings to be had preparatory to the distribution of Monies arising from Judicial Sales, and as to a constructive admission of claims inferred by the Court, have been made.

RESOLVED, that it is the opinion of this Committee, that the Sixth Article of the Twelfth Section of the said Rules, whereby a specific form for the election of a *Domicile* is prescribed, and the Seventh and Ninth Articles of the same Section, whereby a specific form for an opposition *afin de conserver* is prescribed, and the exhibition of certain evidence with the opposition is required for its validity, are illegal and arbitrary, and impose unreasonable, unjust, and injurious restraints upon His Majesty's Subjects, in the exercise of their legal rights, and that the said Court hath thereby assumed Legislative Authority.

RESOLVED, that it is the opinion of this Committee, that all the Regulations contained in the said Rules, whereby specific forms are prescribed for pleadings, motions, notices, and other papers exhibited by Parties or their Attornies in a cause, are illegal, arbitrary, and highly prejudicial to the interest of His Majesty's Subjects, and calculated to defeat in many cases, their just and legal rights, and that the said Court hath thereby assumed Legislative Authority.

RESOLVED, that it is the opinion of this Committee, that the Regulations contained in the Rules of Practice of the Court of King's Bench at Montreal, whereby that Court has arrogated to itself the same power as that at Quebec, to make Rules of the nature of Penal Laws, by declaring prospectively, that a non-compliance with certain of its Rules shall constitute the crime of contempt, are illegal and arbitrary, and of most dangerous tendency, and that the said Court at Montreal, hath thereby assumed to itself Legislative Authority.

RESOLVED, that it is the opinion of this Committee, that the said last mentioned Court, by certain of its Regulations hath extended the power and duties of Attornies, in respect of the concerns of the persons by whom they have been employed, beyond the limits determined by Law.

RESOLVED, that it is the opinion of this Committee, that the Rules of the said last mentioned Court, made in imitation of the Rules of the Court of Appeals, and of the King's Bench at Quebec, whereby the deposit of certain Sums of Money are made conditions precedent to the exercise of the legal right of pleading exceptions "*Declinatoire*," (Plea to the Jurisdiction) "*Peremptoire à la forme*," and "*Dilatoire*," and of obtaining a Trial by Jury, are illegal and arbitrary, of the most dangerous and injurious tendency, and amount to a denial of Justice, and that the said Court at Montreal hath thereby exercised Legislative Authority.

**RESOLVED**, that it is the opinion of this Committee, that the Rule of the said last mentioned Court, whereby that Court hath attempted to alter the Law of "*Peremption d'instance*" and has established a new Rule of Prescription with respect to Suits, by declaring that the neglect of the Plaintiff during two Terms, to proceed in his cause, shall occasion the dismissal of it, on motion of the Defendant, and if he do not ask for the dismissal of the action, the Court is to exercise the power of dismissing it *ex officio*, is illegal and arbitrary, of the most dangerous and injurious tendency, and amounts to a denial of Justice, and that the said Court hath thereby assumed Legislative Authority.

**RESOLVED**, that it is the opinion of this Committee, that the Second Article of the Thirty-fourth Section of the said Rules, whereby a limitation of Twelve Terms is prescribed for the duration of a Suit at Law, and the said Court is empowered to dismiss a cause on the first day of the Thirteenth Terms or on any subsequent day, on motion of any party in the cause, or of it, own accord *ex officio*, is illegal, arbitrary and destructive of the just and legal rights of His Majesty's Subjects, a gross abuse of authority, and amounts to a denial of Justice, and that the said Court hath thereby assumed Legislative Authority.

**RESOLVED**, that it is the opinion of this Committee, that the Eighth Article of the Seventh Section of the said Rules, whereby Jurisdiction is given to the Court over Barristers, Advocates, and Attornies, and they are rendered liable to answer all demands against them, without the service of any process of Summons on them, as required by Law, is illegal and arbitrary, and that the said Court hath thereby assumed Legislative Authority.

**RESOLVED**, that it is the opinion of this Committee, that the rule contained in the Eighth Section of the said Rules, whereby the right of Plaintiffs to a Writ of *Capias ad respondendum* on demands for unliquidated damages in cases of tort, trespass, and personal injuries, is permitted on certain conditions prescribed by the Court, is illegal and arbitrary, and that the said Court hath thereby assumed Legislative Authority.

**RESOLVED**, that it is the opinion of this Committee, that the Eighth Article of the Thirty-sixth Section of the said Rules, whereby persons suing out Writs of "*Saisie-Revendication*" or "*Saisie-Arrêt*," are compelled to make such advances in money, or give such security as the Sheriff may require, without which the Sheriff may refuse to execute the King's Writ, or even receive it, and whereby the Sheriff is deprived of his lien, or recourse on Goods seized, is arbitrary and illegal, imposes restraints not established by Law, and gives a latitude of discretion to the Sheriff, by which injustice and oppression must be occasioned, and that the said Court hath thereby assumed Legislative Authority.

**RESOLVED**, that it is the opinion of this Committee, that the Rule of the said Court, contained in the Thirty-ninth Section of the said Rules, whereby regulations are made respecting Garnishees or "*Tiers-Saisies*," and pro-  
visional

visional Judgments of a particular nature, required to be made against them, is illegal and arbitrary, and that the said Court hath thereby assumed Legislative Authority.

**RESOLVED**, That it is the opinion of this Committee, that the Rules of the said Court, contained in the forty-third section of the said Rules, and in the eleventh section of the said Rules, whereby parties are compelled to make certain statements of fact in their Declarations and Pleas, and certain admissions of fact in their declarations and in exhibits required to be filed, are arbitrary and illegal, and inconsistent with the principles that ought to govern the administration of Justice, and that the said Court hath thereby assumed Legislative authority.

**RESOLVED**, That it is the opinion of this Committee, that by certain regulations contained in the said Rules upon the subject of Bail, the said Court hath exercised Legislative authority, and that thereby the legal obligations resulting from the Bail bond to the Sheriff are modified and in some cases even cancelled.

**RESOLVED**, That it is the opinion of this Committee, that the first, second and third articles of the 9th Section of the said rules, whereby the said Court hath made regulations respecting the giving of security by persons who are not resident within this province, are in direct contradiction to the provisions of the Provincial Statute, 41st Geo. III. chap. 2. sect. 2. are altogether illegal and arbitrary, and that the said Court hath thereby assumed Legislative authority.

**RESOLVED**, That it is the opinion of this Committee, that the fifth and sixth articles of the twenty-seventh section of the said Rules, whereby restraints and restrictions are laid upon the legal right of parties to examine witnesses, about to leave the province, are illegal and arbitrary, and that the said Court hath thereby assumed Legislative authority.

**RESOLVED**, That it is the opinion of this Committee, that the first and eighteenth articles of the twenty seventh section of the said Rules, whereby no allowance in the taxation of costs for more than six witnesses upon an issue is permitted, and whereby to entitle a party to examine more than six witnesses, the payment of a certain sum of money to the Attorney of the adverse party is required, and whereby Attornies are not permitted to charge their clients for the examination of more than six witnesses, are illegal and arbitrary, and impose restrictions, restraints, and burthens upon His Majesty's subjects in the prosecution and defence of their rights, whereby the attainment of Justice may in many cases be impeded, or altogether prevented, and that the said Court hath thereby assumed Legislative authority.

**RESOLVED**, That it is the opinion of this Committee, that the eighth article of the thirty-seventh section of the said Rules, whereby, in certain cases of intervention, claims and oppositions before the Court, a constructive admission of demands is established, and parties exempted from proof thereof

thereof is illegal, arbitrary, unjust and destructive of the rights of His Majesty's subjects, and that the said Court hath thereby assumed Legislative authority.

RESOLVED, that it is the opinion of this Committee, that the rule of the said Court contained in the twenty-ninth section of the said Rules, whereby the answers of parties examined on interrogatories (*"faits et articles"*) are required to be taken by one of the Prothonotaries of the Court, not in the presence of any adverse party, nor in the presence of any Attorney of either of the parties in the cause and out of Court hath been made in manifest violation of the ordinance or law in that behalf made, is contrary to the principles which ought to govern the administration of Justice, might in many cases be destructive of the most important rights of His Majesty's subjects, and is a most dangerous and arbitrary innovation in the proceedings of His Majesty's Courts, and that the said Court hath thereby assumed Legislative authority.

RESOLVED, That it is the opinion of this Committee, that the Rule contained in the fortieth section of the said Rules, whereby the said Court hath attributed to itself an unlimited discretion over costs, as well those recovered by and payable to parties, as those payable to Attornies, and the power of granting as large or small a sum for costs as it may think fit, in each particular cause, is a manifest violation of the just and legal rights of His Majesty's subjects, and designed to vest in the Judges a discretionary power inconsistent with law and Justice, and manifestly tending to the oppression of His Majesty's subjects, and that the said Court has thereby assumed Legislative authority.

RESOLVED, That it is the opinion of this Committee, that the Rule contained in the forty second section of the said Rules, whereby the allowance payable to Debtors confined in Goal is required to be paid "*before twelve o'Clock in the forenoon,*" is manifestly contrary to the provision in that behalf made in the Provincial Ordinance 25th Geo. III. chap. 2. Art. 28th. and is illegal and arbitrary, and that the Court hath thereby assumed Legislative authority.

Your Committee have maturely considered the last branch of the reference made to them, *viz* : "The course to be pursued for vindicating the authority of the Legislature, and repressing such abuses of "Judicial authority." The written Constitution which this Province owes to the justice and liberality of the Parliament of Great Britain, not having established any Tribunal before which abuses, such as are the subjects of this Report, can be brought judicially; your Committee respectfully submit their opinion, that it is expedient to bring them under the consideration of His Majesty's Government in England, in such form as the wisdom of the House may prescribe, in order that justice may be done to His Majesty's faithful subjects in this Province.

(Signed)

J. STUART, Chairman.

ORDERED, That the said Report be taken into consideration on Friday next.

*Friday, 18<sup>th</sup> February, 1814.*

THE order of the day, for taking into consideration the Report of the Special Committee appointed to examine particularly the Rules of Practice of the Courts of Justice in this Province, and to report in detail upon the principal points wherein they are contrary and repugnant to the Law of the Land ; being read—

The House proceeded accordingly to take the said Report into consideration.

ORDERED, That the question of concurrence be now put upon the Resolutions contained in the Report of the Special Committee.

Accordingly, the first of the said Resolutions being read, and the question of concurrence put thereon, a division ensued :

Yeas 17—Nays 1.

The second to the sixth of the said Resolutions, being also read, a division again ensued on each question :

Yeas 18—Nays 1.

And the residue of the said Resolutions being read, were, upon the question being separately put thereon, agreed unto unanimously.

RESOLVED, That this House doth concur with the Special Committee, in the said Resolutions.

It was then

RESOLVED, That *Jonathan Sewell*, Esquire, Chief Justice of this Province, be impeached on the said Report and the Resolutions of the House thereupon, and also on the Resolutions of the House of the 4<sup>th</sup> instant, respecting the authority exercised by the Courts of Justice, under the denomination of Rules of Practice.

R S.



RESOLVED, That *James Monk*, Esquire, Chief Justice of the Court of King's Bench for the District of *Montreal*, be impeached on the said Report and the Resolutions of the House thereupon, and also on the Resolutions of the House of the fourth instant, respecting the authority exercised by the Courts of Justice, under the denomination of Rules of Practice.

RESOLVED, That a Committee of five Members be appointed to prepare Heads of Impeachment against the said *Jonathan Sewell*, Esquire, and the said *James Monk*, Esquire, on the said Report and Resolutions; and also an humble representation to His Royal Highness the Prince Regent, conceived in such terms as may be proper to bring respectfully under the consideration of His Royal Highness, the said Heads of Impeachment, in the humble hope that measures may thereupon be taken to afford means of obtaining justice for His Majesty's subjects in this Province on the said Heads of Impeachment.

ORDERED, That *Mr. Stuart*, *Mr. Bourdages*, *Mr. Papineau*, *Mr. Lee*, and *Mr. Larue*, do compose the said Committee.

RESOLVED, That the said Committee have power to add such Heads of Impeachment as may appear just and proper; and that they have power to send for persons, records and papers.

RESOLVED, That the aforesaid Report, and several Resolutions of this House thereupon, as well as the Resolutions of this House of the fourth instant, respecting the authority exercised by the Courts of Justice, under the denomination of Rules of Practice, and the previous orders of this House on the same subject, be immediately printed.

## HOUSE OF ASSEMBLY,

Saturday, 26th February, 1814.

**M**<sup>R</sup> *Stuart*, from the Committee appointed to prepare Heads of Impeachment against *Jonathan Sewell*, Esquire, Chief Justice of the Province, and *James Monk*, Esquire, Chief Justice of the Court of King's Bench for the District of *Montreal*, acquainted the House, that the Committee had prepared Heads of Impeachment accordingly, and also an Humble Representation to His Royal Highness the PRINCE REGENT, which they had directed him to report to the House: And he read the Report in his place, and afterwards delivered it in at the Table, where the same was read, and the said Heads of Impeachment and humble Representation so reported are as follow:

Heads of Impeachment of *Jonathan Sewell*, Esquire, Chief Justice of the Province of *Lower-Canada*, by the Commons of *Lower-Canada*, in this present Provincial Parliament assembled, in their own name, and in the name of all the Commons of the said Province.

FIRST.—That the said *Jonathan Sewell*, Chief Justice of the Province of *Lower-Canada*, hath traitorously and wickedly endeavoured to subvert the Constitution and established Government of the said Province, and instead thereof, to introduce an arbitrary tyrannical Government against Law, which he hath declared by traitorous and wicked opinions, counsel, conduct, judgments, practices and actions.

SECONDLY.—That, in pursuance of those traitorous and wicked purposes, the said *Jonathan Sewell*, hath disregarded the authority of the Legislature of this Province, and in the Courts of Justice wherein he hath presided and sat, hath usurped powers and authority which belong to the Legislature alone, and made regulations subversive of the Constitution and Laws of this Province.

THIRDLY.—That the said *Jonathan Sewell*, being Chief Justice of  
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this Province, and President of the Provincial Court of Appeals, in pursuance of the traitorous and wicked purposes aforesaid, did, on the nineteenth day of January, in the year of our Lord one thousand eight hundred and nine, make and publish, and cause to be made and published, by the Court of Appeals, various regulations, under the name of "*Rules and Orders of Practice*," repugnant and contrary to the Laws of this Province, whereby the said *Jonathan Sewell*, wickedly and traitorously, in so far as in him lay, endeavoured and laboured to change, alter and modify, and to cause to be changed, altered and modified, by the said Court of Appeals, the Laws of this Province, which he was sworn to administer, and assumed legislative authority, and by the said regulations imposed illegal burthens and restraints upon His Majesty's subjects in the exercise of their legal rights, and attributed to the said Court unconstitutional and illegal powers and authority, altogether inconsistent with the duties of the said Court, and subvertive of the liberty and just and legal rights of His Majesty's subjects in this Province.

FOURTHLY.—That the said *Jonathan Sewell*, being Chief Justice of this Province, and as such presiding in His Majesty's Court of King's Bench for the District of *Quebec*, in pursuance of the traitorous and wicked purposes aforesaid, did, in the Term of October, in the year of our Lord one thousand eight hundred and nine, make and publish, and cause to be made and published, by the said last mentioned Court, various regulations, under the name of "*Rules and Orders of Practice*," repugnant and contrary to Law, by which regulations the said *Jonathan Sewell*, in so far as in him lay, endeavoured and laboured to change, alter and modify, and cause to be changed, altered and modified, by the said last mentioned Court, the Laws of this Province, which he was sworn to administer, and assumed legislative authority, and by the said regulations imposed illegal burthens and restraints upon His Majesty's subjects in the exercise of their legal rights, and thereby attributed to the said last mentioned Court unconstitutional and illegal powers and authority, altogether inconsistent with the duties of the said Court, and subvertive of the liberty and just and legal rights of His Majesty's subjects in this Province.

FIFTHLY.—That the said *Jonathan Sewell*, being such Chief Justice and President of the Provincial Court of Appeals, as aforesaid, and as  
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well by the duties as the oaths of his Offices, bound to maintain, support and administer the Laws of this Province, and award justice to His Majesty's subjects, according to the said Laws, hath nevertheless, in contempt of the said Laws, and in violation of his said duty and oaths, set aside the said Laws, and substituted his will and pleasure instead thereof, by divers unconstitutional, illegal, unjust and oppressive rules, orders and judgments, which he hath made and rendered, to the manifest injury and oppression of His Majesty's subjects in this Province, and in subversion of their most important political and civil rights.

SIXTHLY.—That the said *Jonathan Sewell*, being Chief Justice, as aforesaid, and also Speaker of the Legislative Council of this Province, and Chairman of His Majesty's Executive Council therein, did, by false and malicious slanders against His Majesty's Canadian Subjects, and the Assembly of this Province, poison and incense the mind of Sir *James Craig*, being Governor in Chief of this Province, against them, and mislead and deceive him in the discharge of his duties as such Governor, and did, on the fifteenth day of May, in the year of our Lord one thousand eight hundred and nine, advise, counsel, and induce the said Sir *James Craig*, being Governor in Chief as aforesaid, and being under the influence of the false and pernicious suggestions of the said *Jonathan Sewell*, as aforesaid, to dissolve the Provincial Parliament, without any cause whatever, to palliate or excuse that measure; and did also counsel, advise, and induce the said Sir *James Craig*, to make and deliver on that occasion a Speech, wherein the Constitutional rights and privileges of the Assembly of Lower Canada were grossly violated, the Members of that body insulted, and their conduct misrepresented.

SEVENTHLY.—That the said *Jonathan Sewell*, being such Chief Justice, Speaker of the Legislative Council and Chairman of the Executive Council as aforesaid, in pursuance of his traitorous and wicked purposes aforesaid, and intending to oppress His Majesty's Subjects and prevent all opposition to his tyrannical views, did counsel and advise the said Sir *James Craig*, being Governor in Chief as aforesaid, to remove and dismiss divers loyal and deserving Subjects of His Majesty from Offices of profit and honour, who were accordingly removed and dismissed, without the semblance of reason to justify it, but merely because they were inimical, or supposed to be inimical, to the measures

and policy promoted by the said *Jonathan Sewell*, and in order, in one instance, to procure the advancement of his brother.

EIGHTHLY.—That the said *Jonathan Sewell*, in order in the strongest manner to mark his contempt for the liberties and rights of His Majesty's Subjects in this Province, and his disrespect for their Representatives, and for the Constitution of this Province, did in the Summer of the year one thousand eight hundred and eight, among other removals and dismissals from office as aforesaid, counsel, advise, and induce the said Sir *James Craig*, being Governor in Chief, as aforesaid, to dismiss *Jean Antoine Panet*, Esquire, who then was and during fifteen years preceding, had been, and still is Speaker of the Assembly of Lower Canada, and in the full enjoyment of the esteem and confidence of his Country, from His Majesty's Service as Lieutenant Colonel of a Battalion of Militia, in the City of Quebec, without any reason to palliate or excuse such an Act of injustice.

NINTHLY.—That the said *Jonathan Sewell*, being such Chief Justice, Speaker of the Legislative Council, and Chairman of the Executive Council as aforesaid, regardless of the dignity and duties of his high offices, and in pursuance of his traitorous and wicked purposes aforesaid, did, by an undue exercise of his official influence, in the month of March in the year of our Lord one thousand eight hundred and ten, persuade and induce *Pierre Edouard Desbarats*, Printer of the laws of this Province, to establish a News Paper, under the name of the "*Vrai Canadien*," to promote his factious views, and for the purpose of calumniating and vilifying part of his Majesty's Subjects, and certain Members of the Assembly of this Province, who were obnoxious to the said *Jonathan Sewell*, into which paper the said *Jonathan Sewell* caused to be introduced various articles containing gross libels on part of His Majesty's Subjects, and on the Assembly of Lower Canada: and that the said *Jonathan Sewell* did compromise the honour and dignity of His Majesty's Government, by pledging its support to the said Paper, and holding out assurances of its favour to those by whom the said Paper might be conducted and supported.

TENTHLY —That the said *Jonathan Sewell*, being such Chief Justice, Speaker of the Legislative Council and Chairman of the Executive Council as aforesaid, in pursuance of his traitorous and wicked purposes

poses aforesaid, and intending to extinguish all reasonable freedom of the Press, destroy the rights, liberties and security of His Majesty's Subjects in this Province, and suppress all complaint of tyranny and oppression, did in the month of March in the year of our Lord one thousand eight hundred and ten, counsel, advise, promote and approve the sending of an armed Military force to break open the dwelling House and Printing Office of one *Charles Le François*, being one of His Majesty's peaceable Subjects in the City of Quebec, and there arrest and imprison the said *Charles Le François*, and seize and bring away forcibly a Printing Press, with various private papers; which measure of lawless violence was accordingly executed, and the said Press and papers have since remained deposited in the Court House in the City of Quebec, with the knowledge and approbation, and under the eye of the said *Jonathan Sewell*.

**ELEVENTHLY** — That the said *Jonathan Sewell*, being such Chief Justice, Speaker of the Legislative Council and Chairman of the Executive Council of the said Province, in pursuance of his traitorous and wicked purposes aforesaid, with the intention of oppressing individuals supposed to be suspicious of his character and views, and inimical to his policy, and for the purpose of ruining them in the public estimation, and preventing their re-election as Members of the Assembly of Lower Canada, did counsel, advise, promote and approve the arrest of *Pierre Bedard*, *François Blanchet*, and *Jean Thomas Taschereau*, Esquires, upon the false and unfounded pretext of their having been guilty of Treasonable Practices, whereby they might be deprived of the benefit of Bail, and by means of the influence derived from his high offices, under the Government, caused them to be imprisoned on the said charge, in the common Gaol of the District of Quebec, for a long space of time, and at length to be discharged without having been brought to a trial.

**TWELFTHLY.**—That the said *Jonathan Sewell*, availing himself of the influence of his said Offices, in pursuance of his traitorous and wicked purposes aforesaid, and in order to mislead the Public, deceive His Majesty's Government, and obtain pretexts for illegal and oppressive measures, instigated and promoted various acts of tyranny and oppression similar to those last mentioned, in other parts of the province, whereby divers individuals upon the false pretext of having been guilty of

of treasonable practices were exposed to unjust prosecutions, imprisoned and oppressed and one of them *François Corbeil*, being old and infirm, was by the rigour of his imprisonment deprived of life, and whereby general alarm and apprehension were excited in His Majesty's Subjects.

THIRTEENTHLY.—That the said *Jonathan Sewell*, being Chief Justice, Speaker of the Legislative Council, and Chairman of the Executive Council as aforesaid, in pursuance of his traitorous and wicked purposes aforesaid, on the twenty first day of March, in the year of our Lord one thousand eight hundred and nine, being a time when profound tranquillity prevailed in the province, and when no murmurs were heard, or discontents felt, other than those produced by the tyrannic and oppressive measures previously adopted by the advice of the said *Jonathan Sewell*, and when the loyalty of His Majesty's subjects and their attachment to his Government were, nevertheless, unimpaired, did maliciously, traitorously, and wickedly infuse into the mind of the said Sir *James Craig*, being Governor in Chief, as aforesaid, the most false and unfounded suspicions and alarms, respecting the disposition and intentions of His Majesty's Canadian subjects; and did counsel, advise, and induce the said Sir *James Craig*, to issue a Proclamation, extraordinary and unprecedented as well in style as in matter, wherein the arbitrary, unjust, and oppressive imprisonment of the said *Pierre Bedard*, *François Blanchet*, and *Jean Thomas Taschereau*, was referred to in such manner, as might induce a belief of their Guilt, and excite the greatest odium against them, and wherein such statements were made as implied that the Province was in a state approaching open insurrection and rebellion, whereby the character of His Majesty's Canadian subjects was most falsely calumniated, great injustice done to private individuals, and foreign states may have been drawn, and there is the greatest reason to believe from subsequent events were drawn, in to a belief of such disloyalty in His Majesty's Canadian subjects as would render the Province an easy conquest.

FOURTEENTHLY — That the said *Jonathan Sewell*, being such Chief Justice as aforesaid, in pursuance of his traitorous and wicked purposes aforesaid, did labour and endeavour, by means of his official influence, to extend and confirm the unfounded imputations made, and alarm excited by the said Proclamation, and in the Term of the Court of Criminal

minal Jurisdiction held in the said month of March, one thousand eight hundred and nine, read the said Proclamation in open Court, for the purpose of influencing the minds of the Grand and Petit Juries, in the exercise of their respective duties.

FIFTEENTHLY.—That the said *Jonathan Sewell*, being such Chief Justice, Speaker of the Legislative Council, and Chairman of the Executive Council as aforesaid, in pursuance of his traitorous and wicked purposes aforesaid, hath laboured and endeavoured to produce in His Majesty's Government an ill opinion of His Majesty's Canadian Subjects, with a view to oppress them, and favour the progress of American influence in this Province, and hath traitorously and wickedly abused the power and authority of his high offices, to promote the advantageous establishment of Americans, being Subjects of the Government of the United-States of America, in this Province, and to pave the way for American predominance therein, to the great prejudice and injury of His Majesty's Canadian Subjects, and with a view to the subversion of His Majesty's Government.

SIXTEENTHLY.—That the said *Jonathan Sewell*, influenced by a desire to accelerate a political connexion of this Province, with part of the United-States of America, and to deprive His Majesty's Canadian Subjects of their present Constitution and Laws, did in or about the month of January, in the year of our Lord one thousand eight hundred and nine, enter into a base and wicked confederacy with one *John Henry*, an adventurer of suspicious character, for the purpose of sowing and exasperating dissention among the Subjects of the Government of the said United-States, and producing among them insurrection and rebellion, and a consequent dismemberment of the union, and in furtherance of the objects of the said confederacy, did, by artful and false representations, counsel, advise and induce Sir James Craig, being Governor in Chief of this Province, to send the said *John Henry* on a mission to the said United-States, whereby the attainment of the views of the said *Jonathan Sewell* was to be promoted, and the said *Jonathan Sewell* became and was a channel for the correspondence of the said *John Henry*, respecting his mission aforesaid: by which conduct the said *Jonathan Sewell* hath exposed His Majesty's Government to imputations reflecting on its honour, and hath rendered himself unworthy of any place of trust under His Majesty's Government.

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SEVENTEENTHLY.—That the said *Jonathan Sewell* being such Chief Justice, Speaker of the Legislative Council, and Chairman of the Executive Council as aforesaid, hath laboured and still doth labour to promote disunion and animosity between the Legislative Council and Assembly of this Province and hath exerted his influence as Speaker as aforesaid to prevent the passing, in the said Council, of Salutory Laws, which had been passed in the said Assembly, and hath during the present war with the United-States of America fomented dissention among His Majesty's Subjects in this Province, and endeavoured, by various arts and practices, to prevent a reliance on the Loyalty and Bravery of His Majesty's Canadian Subjects, and produce a want of confidence in the administration of His Majesty's Government, and thereby weaken its exertions.

All which crimes and misdemeanors, above mentioned, were done and committed by the said *Jonathan Sewell*, Chief Justice of the Province of Lower Canada, whereby he the said *Jonathan Sewell*, hath traitorously and wickedly and maliciously laboured to alienate the Hearts of His Majesty's subjects in this province from His Majesty, and to cause a division between them, and to subvert the constitution and Laws of this Province, and to introduce an arbitrary and tyrannical Government, contrary to his own knowledge, and the known Laws of this province: and thereby he the said *Jonathan Sewell*, hath not only broken his own oath but also as far as in him lay, broken the King's oath to his people, whereof the said *Jonathan Sewell*, representing His Majesty in so high an Office of Justice, had in this province the custody: For all which the said commons do impeach the said *Jonathan Sewell*; hereby reserving to themselves the liberty of exhibiting at any time hereafter any other accusation or impeachment against the said *Jonathan Sewell*, and adopting such conclusions and prayer upon the premises, as law and Justice may require.

**Heads**

**Heads of Impeachment of *James Monk*, Esquire, Chief Justice of His Majesty's Court of King's Bench for the District of *Montreal*, in the Province of *Lower-Canada*, by the Commons of *Lower-Canada*, in this present Provincial Parliament assembled, in their own name, and in the name of all the Commons of the said Province.**

**FIRST** — That the said *James Monk*, Chief Justice of His Majesty's Court of King's Bench for the District of *Montreal*, in the Province of *Lower-Canada*, hath traitorously and wickedly endeavoured to subvert the Constitution and established Government of the said Province, and instead thereof to introduce an arbitrary tyrannical Government, against Law, which he hath declared by traitorous and wicked opinions, counsels, conduct, judgments, practices and actions.

**SECONDLY**. — That in pursuance of those traitorous and wicked purposes, the said *James Monk* hath disregarded the authority of the Legislature of this Province, and in the Courts of Justice wherein he hath presided and sat, hath usurped powers and authority which belong to the Legislature alone, and made regulations subversive of the Constitution and Laws of this Province.

**THIRDLY**. — That the said *James Monk*, being Chief Justice of the said Court of King's Bench for the District of *Montreal*, and President of the Provincial Court of Appeals, in causes appealed from the Court of King's Bench for the District of *Quebec*, in pursuance of the traitorous and wicked purposes aforelaid, did, on the nineteenth day of January, in the year of our Lord one thousand eight hundred and nine, make, consent to, concur in, approve and publish, and caused to be made and published, by the said Court of Appeals, various regulations, under the name of "*Rules and Orders of Practice*," in the Provincial Court of Appeals, repugnant and contrary to the Laws of this Province, whereby the said *James Monk* wickedly and traitorously, in so far as in him lay, endeavoured and laboured to change, alter and modify, and cause to be changed, altered and modified, by the said Court of Appeals, the Laws of this Province, which he was sworn to administer, and assumed legislative authority, and by the said Regulations imposed illegal burthens and restraints upon His Majesty's subjects in the exercise of their legal

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rights, and attributed to the said Court unconstitutional and illegal powers and authority, altogether inconsistent with the duties of the said Court, and subversive of the liberty and just and legal rights of His Majesty's subjects in this Province.

FOURTHLY — That the said *James Monk*, being Chief Justice of the said Court of King's Bench for the District of Montreal, as aforesaid, in pursuance of the traitorous and wicked purposes aforesaid, did, in the term of February, in the year of our Lord one thousand eight hundred and eleven, make and publish, and cause to be made and published by the said last mentioned Court, various Regulations, under the name of "Rules and Orders of Practice," repugnant and contrary to the laws of this Province, by which Regulations the said *James Monk*, in so far as in him lay, endeavoured and laboured to change, alter and modify, and to cause to be changed, altered and modified, by the said last mentioned Court, the Laws of this Province, which he was sworn to administer, and assumed Legislative authority, and by the said Regulations, imposed illegal burthens and restraints upon His Majesty's Subjects, in the exercise of their legal rights, and thereby attributed to the said last mentioned Court unconstitutional and illegal powers and authority, altogether inconsistent with the duties of the said Court, and subversive of the liberty, and just and legal rights of His Majesty's Subjects in this Province.

FIFTHLY.—That the said *James Monk*, being such Chief Justice and President of the Court of Appeals as aforesaid, and as well by the duties as the oaths of his offices bound to maintain, support and administer the laws of this Province, and award Justice to His Majesty's Subjects, according to the said laws, hath, nevertheless, in contempt of the said laws, and in violation of his said duties and oaths, set aside the said laws, and substituted his will and pleasure instead thereof, by divers unconstitutional, illegal, unjust and oppressive Rules, Orders and Judgments, which he hath made and rendered, to the manifest injury and oppression of His Majesty's Subjects in this Province, and in subversion of their most important political and civil rights.

SIXTHLY.—That the said *James Monk*, being such Chief Justice as aforesaid, in pursuance of his traitorous and wicked purposes aforesaid, hath, in the exercise of his Judicial powers, openly and publicly ascribed

bed to the said Court of King's Bench, the power of altering, changing and modifying the laws of this Province, and hath alleged and declared, that such power had been recognized by all the Judges of the land in the Provincial Court of Appeals, and on such his false, traitorous and wicked opinions and declarations, hath founded judgments of the said Court.

SEVENTHLY.—That the said *James Monk*, being such Chief Justice as aforesaid, and bound by the laws of this Province to protect and maintain the personal liberty of His Majesty's Subjects, and relieve them from illegal and unjust imprisonment, hath, nevertheless, contrary to his duty, and in contempt of the said laws, denied Writs of *Habeas Corpus* to persons legally entitled to them, and thereby deprived His Majesty's Subjects of their dearest and most important rights, and hath wilfully oppressed them.

EIGHTHLY —That the said *James Monk*, being such Chief Justice as aforesaid, hath, in certain cases, promoted, counselled and advised Criminal Prosecutions, and hath afterwards exercised his Judicial powers, as such Chief Justice, and hath sat in Judgment upon such Prosecutions.

All which crimes and misdemeanors abovementioned, were done and committed by the said *James Monk*, Chief Justice of the Court of King's Bench for the District of Montreal, whereby he the said *James Monk* hath traitorously, wickedly and maliciously laboured to alienate the hearts of His Majesty's subjects in this province from His Majesty, and to cause a division between them, and to subvert the constitution and laws of this province, and to introduce an arbitrary and tyrannical Government, contrary to his own knowledge, and the known laws of this province: And thereby he the said *James Monk* hath not only broken his own oath, but also, as far as in him lay, hath broken the King's Oath to his people, whereof the said *James Monk*, Esquire, representing His Majesty in so high an office of Justice, had in the said District of Montreal, the custody.

For all which the said commons do impeach the said *James Monk*, hereby reserving to themselves the liberty of exhibiting at any time hereafter any other accusation or impeachment against the said *James Monk*,

*Monk*, and adopting such conclusions and prayer upon the premises as law and Justice may require.

## TO HIS ROYAL HIGHNESS THE PRINCE REGENT.

MAY IT PLEASE YOUR ROYAL HIGHNESS,

**W**E His Majesty's most dutiful and Loyal Subjects, the Commons of Lower Canada, in Provincial Parliament assembled, do acknowledge with gratitude the many and great advantages which have been conferred on this Province by His Majesty's wise and just Government. Among these, we have reason to assign the first place to the Excellent Constitution which has been imparted to His Majesty's Canadian Subjects, whereby their civil and political rights have been secured, and constitutional means provided for the investigation of abuses and grievances, which might, if permitted to continue without remedy, prove not less injurious to His Majesty's Government, than to the interests of His Subjects.

It would have been gratifying to His Majesty's faithful Commons, if they could have assured Your Royal Highness, that the beneficent intentions of His Majesty's Government towards them had been realized in the conduct of its Officers, but, unfortunately, it has become our painful duty humbly to represent to Your Royal Highness that, in consequence of abuses of authority, which have been committed by the principal officers in the administration of Justice, the rights of His Majesty's faithful subjects in this province have been violated in the most essential points.

During the present Session of the Provincial Parliament, the attention of His Majesty's faithful Commons has been directed to the exercise of an authority assumed by the Courts of Justice, under the denomination of "Rules of Practice," and we have been alarmed to find, that under that name the Courts of Justice have arrogated to themselves powers which belong exclusively to the Legislature, and have made regulations repugnant and contrary to law. These powers have been so extensively and injuriously exercised as to affect the civil rights  
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of His Majesty's subjects in the most important points, and in some instances in the most oppressive manner; and would, if continued, deprive His Majesty's subjects in this province of their constitution and Laws, and subject them to the arbitrary will and pleasure of the Judges.

We His Majesty's Faithful Commons have found that these abuses of authority have, since the appointment of *Jonathan Sewell*, Esquire, to be Chief Justice of this Province, originated in the Provincial Court of Appeals, in which (such is its vicious and defective Constitution) that Gentleman and *James Monk*, Esquire, Chief Justice of the Court of King's Bench for the District of Montreal, respectively preside on appeals from the judgments of each other, in the Courts of Original Jurisdiction. In January 1809, those Gentlemen concurred in framing Rules of Practice for the Court of Appeals, in which the illegal assumption of authority complained of was exercised, and having thus pledged the Court of last resort for the maintenance of that assumption, they afterwards in the Courts of original Jurisdiction, in which they respectively preside, assumed like authority, and made unconstitutional, illegal and oppressive regulations in those Courts, which they concur in maintaining, and to which their united influence gives entire effect, to the subversion of the Constitution and of the Laws of the Land.

However anxious we have been to direct our undivided attention to measures, which might strengthen His Majesty's Government in this Province, and increase its energies, for the defence of the Province against the Enemy, we could not postpone the consideration of abuses of such enormous magnitude, which, if not corrected, would deprive the Inhabitants of this Province of all the advantages for the preservation of which, against the open attacks of the Enemy they have already incurred, and are still determined to incur the greatest sacrifices. We His Majesty's Faithful Commons have therefore been under the necessity of reducing into specific charges, under the name of Heads of Impeachment, the criminal conduct which we impute to the said *Jonathan Sewell* and *James Monk*, Esquires, and these embrace other crimes and misdemeanours of those public Officers, for which His Majesty's Faithful Commons hold them responsible.

In what relates to the said *Jonathan Sewell*, Esquire, we have felt it to be our duty, when arraigning his judicial conduct, to charge him also with various acts of tyranny and oppression in the administration of the Government of this Province, and with measures injurious to the honour and interest of His Majesty's Government, of which we believe, and will prove, him, by his pernicious counsels, to have been the author.

Having investigated and ascertained the abuses and grievances which are the subjects of complaint, and founded determinate accusations on them, We, His Majesty's Faithful Commons, have done all to which we are competent, for the attainment of justice: it is only from the power of His Majesty's Government, that we can hope for relief and redress, and our confidence in the justice and wisdom of your Royal Highness, assures us, that our humble appeal to that power will not be ineffectual.

Wherefore, we His Majesty's Faithful Commons of this Province, most respectfully beg leave to be permitted to lay at the feet of Your Royal Highness, the grounds of our complaint and accusation against the said *Jonathan Sewell* and *James Monk*, Esquires, and pray that in consideration of the premises they may be removed from their respective Offices, and that the authority of His Majesty's Government may be interposed in such way as, in Your Royal Highness's wisdom, may appear necessary for bringing them to justice.

The above representation referred to in  
the Report of a Special Committee,  
dated the 25th February, 1814.

(Signed)

J. STUART, Chairman.

Debates ensued, and it was finally

ORDERED, That the question of concurrence be now put on the Heads of Impeachment against *Jonathan Sewell*, Esquire, separately.

Accordingly, the question was put separately upon the said Heads of Impeachment, and on the conclusion and the title thereof. A division having ensued upon each, they were carried in the affirmative, and it was

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**RESOLVED**, That this House doth concur with the Committee, in the said Heads of Impeachment of *Jonathan Sewell*, Esquire, Chief Justice of the Province of *Lower-Canada*, and in the conclusion and title thereof.

It was then

**ORDERED**, That the question of concurrence be now put on the Heads of Impeachment against *James Monk*, Esquire, separately.

Accordingly, the question was put separately on the said Heads of Impeachment, and on the conclusion and title thereof. A division having ensued upon each, they were carried in the affirmative, and it was

**RESOLVED**, That this House doth concur with the Committee, in the said Heads of Impeachment of *James Monk*, Esquire, Chief Justice of the Court of King's Bench for the District of *Montreal*, and in the conclusion and title thereof.

After which it was

**ORDERED**, That the question of concurrence be now put on the Representation to His Royal Highness the Prince Regent, paragraph by paragraph.

The question was accordingly put upon the paragraphs separately, the House divided upon each, they were carried in the affirmative, and it was

**RESOLVED**, That this House doth concur with the Committee, in the said Representation to His Royal Highness the Prince Regent.

It was then

**RESOLVED**, That a Committee of five Members be appointed, to prepare an Address to His Excellency the Governor in Chief, to inform His Excellency of the proceedings of this House against the said *Jonathan Sewell* and *James Monk*, Esquires, and to pray that His Excellency will be pleased to transmit the said Heads of Impeachment and Representation to His  
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Majesty's Ministers, to be laid before His Royal Highness the Prince Regent; And also for the purpose of representing to His Excellency the necessity of suspending the said *Jonathan Sewell* and *James Monk*, from their Offices, until His Majesty's pleasure may be known, and praying His Excellency will suspend them accordingly.

ORDERED, That Mr. *Stuart*, Mr. *Papineau*, Mr. *Bourdages*, Mr. *Lee*, and Mr. *Lévesque*, do compose the said Committee.

The Committee retired, and some time after,

Mr. *Stuart* reported the Address to His Excellency the Governor in Chief, pursuant to the foregoing Resolution, and the Address was read, and is as followeth:

### TO HIS EXCELLENCY

## SIR GEORGE PREVOST, BARONET,

Captain-General and Governor in Chief in and over the Provinces of Lower Canada, Upper-Canada, Nova-Scotia, New-Brunswick, and their several dependencies, Vice-Admiral of the same, Lieutenant General and Commander of all His Majesty's Forces in the said Provinces of Lower-Canada and Upper-Canada, Nova-Scotia and New Brunswick, and their several dependencies, and in the Islands of Newfoundland, Prince Edward, Cape Breton and Bermuda, &c. &c.

MAY IT PLEASE YOUR EXCELLENCY,

**WE** His Majesty's most dutiful and Loyal Subjects, the Commons of Lower-Canada, in Provincial Parliament assembled, beg leave to inform Your Excellency, that we have found ourselves constrained by a sense of duty to direct our attention to certain abuses of a dangerous nature in the Courts of Justice, in which *Jonathan Sewell*, Esquire, Chief Justice of the Province, and *James Monk*, Esquire, Chief Justice of the Court of King's Bench for the District of Montreal respectively preside, and to high offences committed by them, upon all which we have framed Heads of Impeachment against the said *Jonathan Sewell* and *James Monk*, Esquires, and an Humble Representation to His Royal Highness the Prince Regent, which we have

have now the honour of presenting to Your Excellency, and pray that Your Excellency will be graciously pleased to transmit them to His Majesty's Ministers, to be laid before His Royal Highness the Prince Regent.

Considering the nature of the Charges which it has been our duty to exhibit against the said *Jonathan Sewell* and *James Monk*, Esquires, we deem it incumbent upon us most respectfully to represent to Your Excellency that it is not consistent with the honour of His Majesty's Government or the interests of his Subjects, that the said *Jonathan Sewell* and *James Monk*, Esquires, do continue in the execution of their respective Offices, while the said charges are depending against them, and we humbly pray that Your Excellency will be graciously pleased to suspend them from their said Offices until His Majesty's pleasure may be known.

It was then moved that the House do concur in the said Addrefs.

The House divided upon the question, and it being carried in the affirmative, it was

RESOLVED, That this House doth concur in the said Addrefs.

ORDERED, That the said Addrefs be engrossed.

RESOLVED, That the said Addrefs be presented to His Excellency the Governor in Chief by the whole House.

ORDERED, That Mr. *Stuart*, Mr. *Bourdages*, Mr. *Larue*, Mr. *Huot*, Mr. *Blanchet*, Mr. *Lee*, Mr. *Gauvreau*, and Mr. *Papineau*, do wait upon His Excellency the Governor in Chief, to know at what time His Excellency will be pleased to receive this House with the said Addrefs.

Monday, 28th February, 1814.

MR. *Stuart*, accompanied by the other Messengers, reported, that they had waited upon His Excellency the Governor in Chief, I pursuant

pursuant to the foregoing Order, and that His Excellency had been pleased to say that he will receive this House with its Address on Thursday next, at one o'clock in the afternoon.

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## HOUSE OF ASSEMBLY,

*Thursday, 3d March, 1814.*

**A**T the hour appointed, Mr. Speaker and the House went up to the Castle of St. Lewis with the Address of this House.

And being returned,

Mr. Speaker reported, that the House had attended upon His Excellency the Governor in Chief with their Address, to which His Excellency was pleased to make the following answer :

“ I shall take an early opportunity of transmitting to His Majesty's Ministers your Address to His Royal Highness the Prince Regent, together with the Articles of Accusation which have been preferred by you against the Chief Justice of the Province, and the Chief Justice of the District of Montreal. But I do not think it expedient to suspend the Chief Justice of the Province and the Chief Justice of the District of Montreal, from their Offices, upon an Address to that effect from one Branch of the Legislature alone, founded on Articles of Accusation on which the Legislative Council have not been consulted, and in which they have not concurred.”

It was then

**RESOLVED**, That the charges exhibited by this House against *Jonathan Sewell* and *James Monk*, Esquires, were rightly denominated “ *Heads of Impeachment.*”

**RESOLVED**, That it is the unquestionable constitutional right of this House to offer its humble advice to His Excellency the Governor in Chief, upon matters affecting the welfare of His Majesty's

ty's subjects in this Province, without the concurrence of the Legislative Council.

**RESOLVED,** That it is peculiarly incumbent on this House to investigate abuses calculated to deprive His Majesty's subjects of the benefit of their Constitution and Laws, and of the pure administration of justice, and that in bringing under the view of His Excellency the Governor in Chief the gross abuses and high offences referred to in the Address to His Excellency, this House hath performed the first and most essential of its duties to the people of this Province.

**RESOLVED,** That it is the indubitable right of this House to exhibit accusations to which it is constitutionally competent, without consulting, or asking the concurrence of the Legislative Council, and that in framing and exhibiting the Heads of Impeachment referred to in the Address to His Excellency the Governor in Chief, this House hath exercised a necessary and salutary power vested in them by the Constitution.

**RESOLVED,** That His Excellency the Governor in Chief, by his said Answer to the Address of this House, hath violated the constitutional rights and privileges of this House.