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A

Statement of Facts

RELATIVE TO THE PROCEEDINGS

OF THE

HOUSE OF ASSEMBLY

ON WEDNESDAY THE THIRD, AND THURSDAY THE FOURTH OF MARCH, 1802, AT THE CLOSE OF THE LAST SESSION.

ADDRESSED TO

THE INHABITANTS OF NEW-BRUNSWICK.

READ AND RECEIVE LIGHT.

PUBLISHED BY DESIRE.

PRINTED FOR THE AUTHOR.

1802.

A

STATEMENT OF FACTS, &c.

I WAS at Fredericton during the latter days of the late session of the General Assembly, and was one of the many attentive auditors in the gallery to the proceedings of Wednesday the third, and Thursday the fourth of March instant. I had been informed on Tuesday, that all the business of the session was closed, which could claim the attendance of the members of the Lower House, except that of receiving the Lieut. Governor's assent to the bills sent up ;—that to two of these bills the concurrence of the Council had not been then received—that some objections had been signified by the Council to one of them—that some alteration had been made by the Lower House in consequence thereof—that a further objection had arisen above, and that the House of Assembly or a majority of them, had determined on making no further alteration therein, as the same was a money bill in which the Council had no right to prescribe the mode or manner of appropriating, nor were entitled to the exercise of any power on bills of supply except that of a negative to, or concurrence with, the whole.—Thus circumstanced, and a majority of the members viewing the business of the session as closed, so far as related to the duties of the Lower House; it appeared

to them, I was told, unnecessary that the whole should remain at great expence to the province, and no small inconvenience to themselves, for the completion of mere matter of form; and therefore they returned home; having fulfilled, as they say (and I think justly) their duties to their constituents, to whom and to the House of Assembly they are amenable for the full and faithful execution of the trust reposed in them: the departure of eight members on Tuesday left only ten behind, including the speaker (a number incompetent to the exercise of their legislative functions as a House which it is fair to presume was a fact in the knowledge and contemplation of the members who withdrew from a longer attendance as useless and oppressive.

I am, Mr. Printer, a man of some observation, and would willingly communicate for the information of the public, the lights I derive from a cool and dispassionate attention to those matters in which the public appear to me to be materially interested.

In the evening of Tuesday I understood in part what I witnessed in the House on Wednesday, and in particular that some great lawyers were of opinion that any number of members could resolve themselves into an House, competent to the exercise of all those functions to which heretofore thirteen had been thought absolutely necessary: I heard once of a man whose grief for the loss of a shrew of a wife (whom he had that evening seen securely nailed up in her *coffin* and deposited in the family vault) was not a little increased about midnight, by her return home

again with the Sexton's lanthorn, who had wickedly disturbed her nap, by a rude attempt to take from her finger a ring which her good man in his haste to put her to rest, or through fear of disturbing her, had deposited with her. I mention this anecdote to shew, that what we repose to a *coffin* will sometimes meet with an earlier resurrection than we usually calculate on: having heard so much out doors, I was not the next day without some expectation to hear, from my station in the gallery, the overture which came from a noble colonel in his place in the House; proposing that the judges of the Supreme Court (who by the by are members of the Council) should be consulted on the right in the members then present to proceed to business, and to the full exercise of all their functions, as a House competent thereto: the gentleman appeared full of zeal and confidence, and to be somewhat astonished at the assurance of Mr. St——t, who presumed to interrupt him, by a motion that the speaker should count the House; which being done, only ten members were numbered, including the speaker. A young man then arose apparently of *great diffidence* and very *prepossessing address;* I think he was the noble Colonel's colleague, but lest I should be mistaken, it will more certainly describe him by saying that he was the gentleman, who, earlier in the session, had given to the House (in the course of a debate on the bill for the easy and speedy recovery of small debts) that useful piece of information, that the justices of this province are limited in the exercise of their powers, to the parish in which they reside; (a circumstance

the House would have remained quite in the dark about, if the gentleman's deep erudition and elaborate course of law-readings had not enabled him to throw this light on the subject) this young man, I say, arose in support of the Colonel's proposition; Mr. St——t, requested that if he meant to bring forward any motion, he would reduce it to writing: this he in part did, or appeared to me to do, and then moved "that the House of Assembly do request the opinion of the judges on the following question," which he read from a paper in his hand, viz. "Whether any number of members of the House of Assembly less than thirteen be a competent number to legislate as one branch of the legislature." The motion was seconded by the noble Col. and was supported also by Captains, A——n and McL——n: Mr. St——t then arose, and after expressing his great deference and respect for the judges of the province, and for their opinions in all matters where they could with propriety be referred to; he with some warmth opposed the motion and its object as unwarrantable in every point of view; he observed that the powers of the House were derived from the constitution and could neither be diminished or extended by any authority but their own—that ancient usage was the only guide to the proper exercise of the powers vested in them, and was therefore termed the Law of Parliament;—that the usage of his Majesty's Colonies had established thirteen as the number absolutely requisite to the formation of an House for the dispatch of business:—That a less number were not competent as a Grand

Jury to find a bill of indictment at a general session of the peace, against *one subject*, and as the House were to be considered as a Constitutional Grand Jury for the Province, it would be absurd to presume that a less number of them should be competent to the passing of bills which were to effect the lives, liberties and properties of *His Majesty's subjects at large throughout the Province.* It had been observed, he said, by the senior member from King's County, that there was *no law* which restrained a smaller number of members from the full exercise of the functions of that House;—and to this, he would only reply that laws were not originally made for *restraining men of honor and probity*; but for persons of a very different description:—that the House of Commons of Great Britain were a great and dignified body;—that their own usage was to them law sufficient for securing their privileges;—that although they were the great Grand Jury of the realm, yet their importance and extent as a Representative Body, was such, that forty members were, by ancient usage, requisite to the formation of an House, and that without that number (including the Speaker,) *invariable usage in that House* had always been found law sufficient to prevent the Speaker taking the chair (except to receive a message from the King, or for the purpose of adjournment:—that though it was comparing small things with great, yet he thought himself justified (comparatively within the Province) in viewing the House of Assembly of New-Brunswick, as a great and dignified Body;—that what had prevailed as an usage with them from their first existence, and with all other His

Majesty's Colonies in America, at all times, could not he conceived, need the support of stronger law to enforce the continuance of its practice; but to infringe on it for the very purpose, which it was meant to guard against, that of *taking the House by surprise*; was an attempt the most dishonorable he had ever witnessed; he therefore moved that the Speaker quit the Chair, in which he was seconded by Major D----n, a respectable veteran officer of the half pay list, and the only member with him in his opposition to the formidable phalanx of seven, who seemed determined to bid defiance to all those honorable ties of usage which the House had ever held sacred.

The Speaker accordingly arose and adjourned the House at half past one till eleven the next day.

The shock which this adjournment gave to the Seven Champions (not of Christendom) but of the———— was easy to be discerned by the strong traits of dismay, disappointment and chagrin which marked the countenances of the whole; the noble Colonel (as completely unhorsed as Richard the Third, at Bosworth Field) called aloud for the Speaker; Mr. St---t, with assumed gravity, recommended to him the election of a new one; The mortification was too great to be patiently borne, and the Seven Champions suddenly decamped from a longer exposure to public ridicule and contempt.

Here I must digress a little, and, as a man of observation, express my surprise that the very modest and ingenious young gentleman who brought forward the motion (for an application to the Judges for their opinions as to the competency of a less number than thir-

teen to legislate on a pinch) should have been under the necessity of making such a motion; for I noticed that on Wednesday morning, before the Speaker took the Chair, the seven gentlemen withdrew from the House below (as it appeared to me) to a general consultation above; I thought at the moment it had the semblance of unanimity and a good understanding between the two Houses, and that where there were such open habits of communication, an unlimited confidence might be supposed to subsist: I therefore confess I took it for granted, that the opinions of the gentlemen on both sides were well known to each other, and could not but be a little surprised at the anxiety of gentlemen (on their return to the House) to obtain the opinion of their friends above: but we must live and learn; I have been often told that its the easiest thing in the world to be mistaken, and I believe I may safely subscribe to the truth of it, for simpleton as I am, I never found any difficulty in the science of blundering; and as the Devil will have it, the inquisitive part of my acquaintance are always sure to see clearest when I could wish them blinded with snuff.

Curiosity has led me many a dance, and upon this occasion, it had taken full possession of my poor devoted fabric of mortality: to my post it hurried me on Thursday full of speculative expectation, the day seemed portentious of some great event; but I could not yet discover it, and with all my watchful attention remained quite in the dark till about half past two in the afternoon, when the Speaker took the Chair: all I could observe before was a general confused bustle, detached

whispering parties in different quarters, frequent visits from the gentlemen below to the gentlemen above; great appearance of treaty and negociation, but nothing intelligible; at length the Speaker having taken the Chair, requested the members to take their places.

Mr. St---t moved to count the House: The Speaker counted it, and found only eight members including himself. The *member* for Queen's and his colleague had retired to the Otium cum dignitate of recess; he was certainly one day too late. I believe the man with the iron mask would have caught a severe cold during the latter years of his life, if he had taken it off for a day, and exposed his real face to the world; and I suppose the same effect would ensue to any other person who has been long accustomed to wear a mask.

A motion was then made by Mr. St——t, and seconded by the firm old Veteran Major D——n, for the Speaker to quit the chair; this was opposed by all except the Gentleman by whom the motion was made and seconded.

A message then came in from the Council with a Bill in addition to an Act to regulate the Terms of the Sittings of the Inferior Court of Common Pleas, &c. with an Amendment, which was read and concurred in by all except Mr. St——t, and Major D——n, the former expressing himself nearly in these words;—I will neither say Yea nor Nay, as I protest against the Speaker keeping the Chair, or proceeding to any business to which the members present are incompetent; in which he was joined by Major D——n.

A message then came in from the Council requesting a conference on the Bill for raising a revenue and for appropriating the same, &c. to which all agreed except Mr. St——t, and Major D——n, the former of whom desired to be heard on his objections to these proceedings; but whilst he was speaking the Captains A——n, and McL——n, appeared to me to be hurried out to the conference which was settled in two minutes or thereabouts, and they returned to the House, delivering to the Speaker, as it appeared to me the Bill in question, together with a written paper expressive, I presume, of the Council's objection thereto, and at the same time informing the Speaker that they required the words "Samuel Denny Street Esq." to be expunged from the 17th section thereof. The question was then put by the Speaker; whether the words "Samuel Denny Street, Esq." should be expunged; and passed in the affirmative. I observed then that the Bill was handed by the Speaker to Mr. St——t, to make (as Clerk I presume) the alteration proposed; and I also observed that Mr. St——t, returned the Bill to the Speaker, declining to make any alteration in a Bill that had passed the House, at the instance of a few members, of whom he himself had declared that they possessed no power to make any alteration whatever therein. The Speaker then as far as I could discern, made the alteration himself, and the Bill was returned to the Council, who, shortly after, sent a message informing the House of their concurrence therewith.

And thus I conceive the first ordinance for raising a revenue in this province, and for appropriating the same has derived its birth.

That we shall never have a second, I feel the strongest confidence, and that the first may meet with no resistance from the public, I sincerely hope, for the preservation of the peace and harmony of his Majesty's Province, as I have pride in asserting myself to be one of his firm, loyal and affectionate subjects. But if any have infringed the privileges of the House, and have usurped the exercise of powers they had no just claim to, for the purpose of altering two Bills which had duly passed that House, I hope they will be made answerable for their conduct at a future day, and that in a manner so exemplary and effectual as to prevent any repetition of so daring an outrage on our Constitution in future.

For the purpose of fair investigation, Mr. Printer, have I written, that the public may be informed so as to enable them to form a proper judgment of the facts I have presented to them; and I here challenge the detection of one single error in statement throughout this letter.

On the second of April, 1604, the House of Commons of Great Britain, made the following rule:—"That a question being once made and carried in the affirmative or negative, cannot be questioned again, but must stand as a *Judgment of the House*."—This rule has never been deviated from, except in instances where a question of weight may have been put in a thin House, and the consideration of it afterwards

claimed by a fuller House, for the purpose of obtaining more fully the sense of the house by the additional members.

What then shall we say, or what must we think of those who *reverse* this rule of honour and equity; and after a question has been once put in a *full House* and *negatived*; *resume the same in a thin House*, composed wholly (except one and the Speaker) of those who *held the affirmative* when the question was *first put*.

Read and receive light; for nothing but *facts* shall be given to you.

On Monday the 1st of March, 1802, a bill for appropriating and disposing of the public monies, was read the third time as engrossed; and a motion was then made, that the name "Samuel Denny Street, Esquire," be taken out of the bill, and the word "*the*" inserted: upon which the House divided—yeas seven, nays ten, and the motion was negatived.

On the Thursday following, seven Members only present, including the Speaker (who were entitled to vote) and five of the seven well known to be of those who held the affirmative when the question was first put; the question was again put, for expunging the words "Samuel Denny Street, Esquire" from the said bill, and the same passed in the affirmative.

Thus you must perceive, Mr. Printer, that by this mode of putting the question a second time, the *affirmative of five*, was allowed *to prevail* against the previous *negative of ten*.

Is this *a fair and honourable discharge by our Representatives of the trust reposed in them by us, or is it not?* Or will it admit of a question, after the facts I have adduced?

It is time, my worthy and loyal fellow-subjects of a great, a good, and virtuous Monarch, that we should act with caution. We have proved ourselves faithful and loyal subjects, and we are entitled to the enjoyment of that Constitution for which we have shed our blood, and sacrificed so many of our dearest friends and connections, during a long and bitter conflict. We are, I presume, on the eve of that period, when we are again to exercise our right to elect those by whom we are to be represented, and who are to form one branch of the Legislature. If any of those to whom we have heretofore given our suffrages have deceived or betrayed us, it is then that we can shake them off, and consign them to that contempt which they merit; it is then that we can legally (and without disturbing the peace and harmony of His Majesty's loyal Province of New-Brunswick) effectually redress ourselves; it is then that we can frown indignant on the artful, fawning sycophant, who shall ask us to vest him with power, that he may barter it for the promotion only of his private views and interests.

Attend, I intreat you, to the manner in which this caution is given. It is not to promote the interest of any particular persons or proposed candidates for your future confidence; it is not to answer any partial or interested purposes; but it is to prevent your being cajoled and flattered into a sacrifice of those invaluable

privileges, which you derive from the best of Constitutions. And it is a caution preceded by a state of facts incontrovertible in themselves; highly interesting to the Province at large; and in a particular manner entitled to the weighty consideration of those Counties, who may consider the conduct of their present members reprehensible.

For the information of the public, it may be proper to subjoin the following parliamentary authorities, viz.

"It doth not belong to the Judges to judge of any law, custom, or priviledge of Parliament." *Coke's Instit.* 50.

"When laws shall be altered by any other authority than that by which they were made (says King Cha. 1st. in his speech at Newark to the inhabitants of Nottingham, 1642) your foundations are destroyed."—*Rush. vol.* 3. *page* 653. *Lex. par.* 359.

"The difference between an act of Parliament, and an ordinance in Parliament, is, for that the ordinance wanteth the three-fold consent, and is ordained by one or two of them." *Coke's Inst.* 25. *Lex. par.* 365.

The application of these authorities is too obvious to need any comment from CREON.