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From the ST. JOHN GAZETTE.

THE REVIEW.—No. V.

THE Judges of the Supreme Court, it will be found upon examination, have not acted arbitrarily, or in any instance deviated from the rule originally laid down and agreed upon. The only acts of Parliament passed since the Refutation which this Court has construed as extending to this Province, as I have been well informed, except those already mentioned, are the Statutes enabling the Judges to appoint Commissioners in the different Counties to take affidavits and acknowledgments of bail to be read and made use of in their respective Courts, and the Statute of Anne, "for the amendment of the law and the better advancement of justice." Now, as the Judges of the Supreme Court have, by their Commissions, the powers of the Courts of King Bench, and Common Pleas, and Barons of the Exchequer, and the laws regulating the powers, practice and constitution of those Courts in force at the time the Supreme Court was established, of necessity attach as a part of its constitution, otherwise there would be a failure of that justice which the Court was instituted to secure to the inhabitants of the Province.

But even if they had construed other acts of Parliament as in force here, which were passed since the Refutation, would the Court be more concerned, as coming within the scope of their jurisdiction, to determine in the first instance respecting their extension, and if any inconvenience results from their decisions, requiring a remedy, the General Assembly may make such provisions in their own acts as are more suitable to the state of the Province, in the same manner that they may re-enact any of the Statutes, as they may think expedient from time to time, which are not construed as binding here. But I believe it will not be said, that any instance of the kind has ever yet existed. Undoubtedly, however, every act of Parliament, declaratory of the common law, at whatever time passed, will and ought to be considered as binding in the Province, in cases not excepted in the rule as above laid down by Blackstone: such, for instance, as the "act declaring the rights and liberties of the subject," passed in the first year of the reign of King William and Mary, the Statute of Anne, made in consequence of "a doubt whether the entering into the mansion-house of another, without breaking the same, with an intent to commit some felony, and breaking the said house in the night-time to get out, be burglary,"—"Lord Bacon holding the affirmative," and Sir Matthew Hale the negative," by which Statute such entry and breaking are declared to be burglary. This being merely declaratory of what a burglary is, which is a felony at common law here as in England. But why are such groundless insinuations and malicious hints so industriously thrown out respecting the Supreme Court? Why are we told in the public News-papers of the danger "of an authoritative bias from the Judges of this Court"? Why the indecent reflection upon our most gracious Sovereign, and his most confidential Servants, in suggesting in terms so insidious and degrading, that their Judges "are much more dependent for their daily bread on the Ministers of the Crown, than any menial Servant in the Province is on his Master"? Why such infamous malevolence, wickedly though impudently discovered, is asking—"how can these men be politically pure, who are so wretchedly dependent"? Can any good and loyal

Subject bear such atrocious calumny as this without indignation and abhorrence of the Author of it? Is not the nature of the Commissions of the Judges of our Supreme Court the same that it always has been in all the King's Colonies? Is it not necessary from our situation, as a distant part of the territories depending upon and belonging to the Empire, that these Commissions should be during the King's pleasure? Are not the salaries of these Judges, in case of our helplessness and infant state, most generously provided for and paid by the Parliament and People of Great Britain? Are not these Judges sworn to the faithful and impartial discharge of their duty? Is there the smallest reason to suppose, while they act honestly, uprightly and faithfully, between the King and his Subjects, that they will be censured or removed by our most gracious Sovereign? On the other hand, is there the least ground to imagine, if they act dishonestly, corruptly, or with partiality, that they will not be punished and displaced by this just and benevolent Father of his People? Is it loyal, is it grateful, is it decent for us to listen without the most pointed disapprobation to insinuations, that his Majesty or his Ministers can have a wish or inclination to influence the Judges in their decisions in any respect, or to have them governed by any improper motives? Or, that unless the Judges are subservient to such a wish and inclination, they are in danger of removal? Must not the man who dares to disseminate such doctrines here, be an enemy to the peace, the welfare, and prosperity of the Province? Is not the obvious design of such publications to make us discontented with those parts of our Provincial Establishment that are necessarily and inseparably incident to a state of dependence upon the Parent State?—But "how vain the hope! how ridiculous the attempt!" Will not "the favoured, and affectionate, and loyal people" of this Province, despite the man who offers to impeach or shake "the gratitude and respect they owe" and feel for the unexampled liberality "of the British Government to the unfortunate American Loyalists in general, and the peculiar munificence and parental care of our most gracious Sovereign to those settled in New-Brunswick?"

But let me go a little farther, for we are miserable indeed if this subject will not bear the severest scrutiny.—If there is any charge that can be established against the Judges of the Supreme Court; if their power and influence have been improperly extended; if they have ever abused the great and important trusts reposed in them; if there is any reason to call in question the purity of their motives and integrity of their conduct on any occasion is the circle of their administration of justice—why do we not find the instances brought forward with the evidence of their crimes? May they not safely defy the unweaned tongue of the most seditious incendiary to exert its utmost malice in the scrutiny of their judicial conduct in these respects? If I am wrong in saying so much for them, I will thank any man to point out my error; will most readily retract what I have advanced; and as freely censure, as I have endeavoured to vindicate, their conduct, the moment there is proof of guilt or just ground of accusation.

The Supreme Judges and distributors of Justice in a Country, like Cæsar's wife, ought not only to be innocent, but not even suspected of guilt: the instant such a suspicion is adopted, all public confidence in them is lost, and instead of a blessing they become a curse to a people.

How can these attempts to vilify our Supreme Court, and render it odious in the eyes of the people, be so easily so? Clearly upon one principle only—a wish to throw down all distinctions, to place the public mind, to awaken it to groundless jealousies and fears, and introduce into this yet happy Country all the dreadful anarchy and horrors that have already ruined one of the most polished nations in the world.

My fellow-subjects throughout the Province will pardon my warning them most earnestly against listening to such insidious doctrines, to suffer no impression to be made upon their minds by the seditious clamours of discontented individuals, who are seeking to raise themselves upon the ruins of the Country's peace and tranquillity, and judge for themselves to believe their Judges and Rulers honest and upright, till they find them to be otherwise; and enjoy in peace the blessings that surround them in a former proportion and degree than is at this time experienced in any part of the known world. [To be continued.]

P.S. I have just now seen, in the Paper of Tuesday the 17th instant, some obliging remarks of Mr. A. Friend to the Reviewer, upon the Review No. II. To which I shall reply in my next Number.

From the ST. JOHN GAZETTE.

EXPLANATION OF ERRATA, IN REVIEW No. III.

Paragraph 13. MY learned Friend the Reviewer well knows, that the first sentence in this paragraph is both uncouth and incorrect: But he wishes to introduce into general use a Gothic dialect of the English tongue, which, by rejecting not only the rules of grammar but precision and accuracy of language, is extremely convenient to those who naturally write in a confused and unintelligible style. In a subsequent Review, he intends to give a full explanation of what I meant both by the *uncouthness* and the *poor* of a Bill. He once apologized publicly for throwing out some indecent reflections against the Declaratory Bill, but is now sensible, that he never saw it till it appeared in the News-papers. He leaves every reader at liberty to consider the word *poor*, with which the first sentence ends, as referring either to the principle of the Bill or to its gilded pill.

Paragraph 14. The reasoning in the two first sentences in this paragraph my learned Friend intended to have expressed in the following manner:

I at once found that the idea I had entertained of the Bill necessarily involved a power in the *subordinate* to bind the *Supreme Legislature*; that the General Assembly was incompetent to pass such a law; that if a law could be made by the Assembly, which cannot be made by it, it must of necessity be ineffectual in its operation; and that the mischief of a law, which cannot take effect, if it could take effect, would be much greater than there is was professedly intended to remedy.

The phrase, "a Bill loaded with so many absurd clauses, as I shall show the whole of them to have been," my Friend knows to be both Gothic and ambiguous: he intended it should be so: It may be construed in such a manner as to make the word *whole* refer either to the absurd clauses of the Bill, or to all its clauses. In the first case it may be read thus—"a Bill loaded with such absurd clauses as I shall show the whole of them to have been;" and in the second thus—"a Bill loaded with such absurd clauses

as I shall show the whole of them to have been."

The word *is*, with which the last sentence in this paragraph begins, may be considered by any reader as referring to the Bill, the Reviewer's idea of it, the House, or in short to any thing else.

It was entirely through inadvertence that the learned Reviewer acknowledged, in the last sentence of the 3d paragraph, that he does not understand the subject he is writing on. He by no means wishes the public to entertain such an idea. In the hurry of writing his extreme modesty does the oblation from him; and as he lent this Review to the Press as soon as he had written it, he did not observe this mistake. I wish, however, he had not made it; for my sincere attachment to him, and real concern about his reputation, make me somewhat apprehensive that many readers will be inclined to believe him, who are not as yet sufficiently accustomed to his custom to admit, as they ought, his new and nervous Gothicisms.

In paragraphs 4 and 5, the learned Reviewer purposely, and at the same time very artfully, confounds the Refutation and the Reign of Charles the III. within the beginning and end of that Reign to be considered as one and the same period. As he also assumes that for himself to argue from, and for a variety of reasons perfect fallacy will

He is sensible that the assertion in the 4th paragraph, viz. "that before the Refutation the Colonies and Plantations were never in the contemplation of the Sovereign Legislative Power," is an audacious falsehood: but for this very reason he expects his readers will grant it to him as another datum.

He also knows the assertion in paragraph 7, viz. "that all acts expressly extending to the Colonies, viz. the words which he has quoted from the Navigation Act," to be grossly false: he therefore expects his readers will grant it to him as a third datum.

For the very same reason, he hopes they will readily grant him the following data, viz.:

That the Judges are constitutionally Law-givers as well as Law-interpreters: That the first House of Assembly, in obedience to the dictates of the Judges, did therefore, with due humility and submission, formally adopt the Refutation as the period down to which acts of Parliament may legally be construed as of force in this Province:

That of course all acts of Parliament passed before the Refutation are in force in this Colony:

That on this principle the acts of the first Session of that House were framed; and that notice thereof was transmitted Home with a copy of the Acts themselves.

Take NOTICE!

WHEREAS a number of Trespassers have been committed upon Lands belonging to the Subscriber, viz.—a Tract of Land on the River Kennebec, known and distinguished by the name of *Parrascote Farm*—a Lot or Tract of Land on the *Wishademoock*, No. 37—another Tract on the *Nashua*, originally granted to *Thomas Welch*, surveyor—This is to warn all Persons whatever, from cutting or carrying off Hay, or Timber, or otherwise trespassing on the above Premises, as they may depend on being prosecuted to the utmost rigor of the Law, unless leave being obtained from the Subscriber.

JOHN SMITH, St. John's Jan 12, 1796.