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FOR THE ROYAL GAZETTE.

To a CUSTOMER and READER of the ROYAL GAZETTE.

BEFORE I proceed, gentlemen, I must more distinctly explain to which of you I am from time to time addressing myself, indeed, I confess I cannot always satisfactorily determine in my own mind, which of the publications under your signature, you are respectively the authors of; in other words, whether the Reader or Customer be the writer. The course of your proceeding I however take to be this, that the Customer is the runner, that takes the materials to the Reader, and that your productions may properly be considered as the joint efforts of both, but that the Reader is the amanuensis, and that he only is known to the Printer. Under this belief I shall beg leave to consider the Reader as the author, at the same time with regard to these passages that are evidently considered by yourselves, as particularly brilliant or deep;—to prevent jealousy between you, I shall impute them to your united learning and sagacity, and one of these extraordinary efforts forcibly arrests my attention, and compels me for a moment to relinquish the plan I had proposed to myself. It is a passage that some times appears in the form of an apology, as if you were afraid of detection; at others, is more conspicuously introduced as an answerable argument in support of the novel doctrine you have advanced, and as it crowns your labours as a conclusive and concluding observation, I conceive that you consider it as the key-stone of your building; and it most certainly is so—for if this prove unsound, the mighty fabric must tumble to the ground. I am willing therefore to test all your reasoning by this touch-stone.

"The act of electing a capital Burgess, and that of consenting to the making of a law under the Governor's commission," (you say) "differ only as to the liability of being annulled. The former, if contrary to the charter, may be adjudged void. The latter, though contrary to the King's commission, having obtained the usual formalities, solemnities and marks of authenticity of an act of the General Assembly, being also a matter of record, against which no averment can be made or admitted, cannot as I have said before, be defeated or controuled by any Court or power in this Province."

I must, before I answer it, trace back the occasion upon which you before made the same profound observation, it was in your early essay published in the paper of the 28th of July, in which you venture to assert, "that fourteen Members of the Assembly and seven of the Council, must be actually present when a Law is passed or altered in either of them respectively." Thus decidedly telling the inhabitants of the Province, that all the Laws passed in the Session of 1789, as well as the Revenue Law that is now in force, are illegal and unconstitutional, and this you tell us in your charming, soft, persuasive manner you do, "without any artful or insidious intention, or the most distant design of making a direct attack;" I wish you could with truth have said, without an immediate design of making an indirect attack upon the administration of the government of the Province." But what marks your design, and exposes your intention to those who know you is, that you yourself gave it most decidedly as your opinion at the time of the late secession, to the Speaker, and several other gentlemen, from whom I received it, that the House had an undoubted right to legislate after the secession, and you at the same time congratulated the Speaker upon the manner in which they closed the business. But you will perhaps here make the

same apology for yourself, that you kindly furnish for the Governor and His Majesty's Council, and the House of Assembly for these seventeen years past, that "the form of a Governor's commission was not published before the first Session of the first Assembly!!!"

As if, afraid that you had said too much, in case you should be discovered, and more fatally direct the poison, by smoothing and polishing the arrow, and oiling its point; the moment it had issued from your bow, drawn to its utmost tension, with the keenest aim—"you think it your duty to the public to declare, that you do not consider the Laws alluded to as void and of no validity, but on the contrary, having all the usual formalities, and marks of authenticity cannot be defeated or controuled by any Court or power in this Province." I certainly shall not give you the credit of having voluntarily furnished the instrument of your own destruction, but a moderate degree of knowledge in the Law, would have taught you that it is in the power of the Supreme Court, to determine upon the validity of every act of Assembly that can be passed, and that the very principle by which that validity must be determined, completely establishes the absurdity of the construction you have given to the Governor's commission.

So far as the public is concerned, it may perhaps be necessary for me to state that the commissions to the Judges of the Supreme Court of this Province, give them full power and authority in the said Supreme Court, to hear and determine all Pleas whatsoever, civil, criminal and mixed, according to the Laws, Statutes and Customs of that part of the kingdom of Great Britain, called England, and the Laws of the said Province of New-Brunswick, not being repugnant thereto; and to act and do all things which any of the Justices of either Bench, (the Court of King's Bench or Common Pleas) or Barons of the Exchequer in England, may or ought to do, and to make such rules and orders in the said Supreme Court, as shall be judged useful and convenient, and as near as may be agreeable to the rules and orders of the Courts of King's Bench, Common Pleas and Exchequer in England."

It hence follows, that whatever powers the High Courts of Law in Westminster Hall, have, respecting Acts of Parliament, their validity and operation—the Judges of the Supreme Court in this Province, have the same powers respecting the Acts of the General Assembly, their validity and operation.

Now by the Law of England. (a) "The construction of all Acts of Parliament, is given to the Courts at Westminster, and accordingly they have adjudged of the validity of Acts of Parliament, have searched the rolls of Parliament, have determined whether the Journals be a record."—"An Act of Parliament," and in like manner an Act of Assembly "is a record of so high a nature, that it can be tried only by itself."—"If in the roll upon record, it is expressed to be enacted by the King, Lords and Commons," or in the case of an Act of Assembly, by the Governor, Council and House of Assembly, "it must be adjudged a good Act."—"Journals are no records, but remembrances for forms of proceeding to the record." They are like the Dockets to the Pronotaries, or the particular to the King's patents; the judgment ought to be grounded upon the Letters patent, and not upon the particular, for the particular is prima intentio regis, and the Letters patent are ultima intentio regis."

(a) 1 Mod. 146. Hob. 110. 8 Co. 20, b. 4 Com. dig. 375. 6. 2 Co. 34. Dyer 331. 6.

"The Journal is of good use for the observation of the generality and materiality of proceedings and deliberations as to the three readings of any Bill, the intercourses between the two Houses, and the like, but when the Act is passed, the Journal is expired."—"But if the record of the Act itself carry its death-wound in itself, then it is true that the Parchment, no nor the Great Seal, either to the original Act, or to the exemplification of it will not serve, as in the 4 H. 18, where the Act was by the King, with the consent of the Lords, (omitting the Commons,) and was adjudged therefore void, and he that observes the case, 33 H. 6: 17. shall find it so, and upon this rule, the doubt to be conceived, Scilicet, upon the Parliament roll itself, not upon the Journal."

I aver then that the validity of every Act of Assembly in this Province, if called in question, is legally and constitutionally to be adjudged in the first instance, by the Supreme Court, from whose decision a writ of error lies in the nature of an appeal to the Governor and Council, and from thence to the King in Council, all of which Courts must be governed by the established rules of Law in their decisions, and must of course, adjudge every Act of Assembly, which in the roll thereof upon record, is expressed to be enacted by the Governor, Council, and Assembly, to be valid and binding to all intents and purposes, and of course such Act cannot be legally or constitutionally annulled, defeated or controuled on account of the manner in which it is passed, whether by three, five or more Members in either of the Houses, before whatever Court it may be brought for adjudication, either here or in England. And consequently that there is not the smallest resemblance in this respect, between an Act of Assembly, and the Act of a Corporation, such as you have filled two columns of the news-paper, in transcribing the account of a decision upon, in the Court of King's Bench, which, for ought that concerns the present question, might as well have been filled with a chapter from the Alcoran, on the blue Laws of Connecticut: for it is an undeniable consequence of your doctrine, which you do not seem to have discovered, that the Supreme Court of this Province, must have the same right to superintend, controul and correct the proceedings and conduct of the House of Assembly, that they have of the corporation of the City of Saint John, or that the Court of King's Bench has of any corporation in England, if there be any such analogy or resemblance between an Act of one of these Corporations, and the passing an Act of Assembly by the House, as you contend for. But all the doctrine that I have advanced on this subject, is founded upon the inherent, inseparable, essential nature and constitution of the House of Assembly, as a branch of our Provincial Legislature, which I have in a former paper enlarged upon, and to which I beg leave to refer you—"That whatever matter arises concerning either House of Parliament ought to be examined, discussed and adjudged in that House to which it relates, and not elsewhere; upon which principle alone rests that independence of the Council and House of Assembly, which is their dearest privilege, and without which, they would cease to have the smallest resemblance to the British Parliament, by the Laws, rules, orders and usages of which, it is on all hands admitted, they are constitutionally to be governed and directed.

It is true that His Majesty has provided in the Governor's commission, that all the Acts of the General Assembly shall within three months after the making thereof, be transmitted under the Great Seal of the Pro-

vince, for the Royal approbation, or disallowance of the same."—"And this from the inherent principles of the British Constitution is absolutely necessary, in order that a due conformity to these principles may be preserved throughout every part of the dominions. But the Seal of the Province, under which he has directed the Laws to be transmitted, is conclusive evidence of their having been duly passed by the three branches of the Provincial Legislature, so far as respects the Constitutional assent of those branches, respectively to those Laws. Thus at once falls to the ground, your whole fabric, as it appears that there is a Court in the Province that can determine with regard to every Act of Assembly, whether it be valid or not, and that the very ground upon which this validity rests, and must be determined, totally destroys the construction you have so fancifully and absurdly given, to view it in the mildest light, to the Governor's commission.

But I will go further—It is required by His Majesty's instructions to the Governor, that he send to England a copy of the Journal of the House of Assembly, at the close of every Session, which by the way, furnishes another irrefragable proof, that the Clerk of the House must be appointed by the Crown, as the Governor could have no right otherwise to demand such a copy for transmission; and accordingly while there was a Clerk who was legally and constitutionally appointed and sworn, a copy of the Journal has uniformly, till the last Session, been sent home. Now, as it must be known to His Majesty and his Privy Council, what number the House of Assembly consists of, and it must also have been seen from the Journal of 1789, that the Laws during that Session, were passed by a House consisting of thirteen Members only, including the Speaker. Another complete proof is thence furnished, that your construction of the Governor's commission, is as groundless as I have considered it, and that the principles and doctrine I contend for, are sound and constitutional.

You seem to be aware after all, of the insuperable difficulties attending the construction you have invented, and that if the strict literal sense of the words you contend for, is adhered to, it will necessarily follow, that a majority, that is fourteen Members of the House, and seven of the Council, must all in fact individually give their consent to the passing or altering of any Law; and to get rid of your embarrassment, you cut the Gordian knot, by saying, "I will allow that in construction of Law, an Act of Assembly passed by a bare majority of the Members of the whole House, may be said to be the Law of, and to express the consent of the whole Assembly, in which sense, which I contend is the sense of the words or a major part of them respectively, if a majority of the Assembly, viz. fourteen Members are present, an Act passed by a bare majority of these may be said to be the Act of the whole fourteen, and to express their consent, and of course may be said to be an Act of, and consented to by the Assembly, otherwise popular Assemblies would seldom, if ever agree in passing a Law, they must act and consent by a majority." You certainly can be neither a Lawyer nor a Judge to argue thus—Such reasoning might besit a Sophomore who had just begun to chop logic at college, and had learned the sophistry of using the middle term of his argument in an equivocal sense.—Your argument reduced to the form of a syllogism is this:—

To be present when an Act is done, is to consent to it.

Fourteen Members were present in the House when the Act passed.—Therefore— These