

recollection whatever, of having ever paid any part of the principal of the Bond.

That a Man, who could not recollect any part of any transaction that could account for such a reduction of the principal as he swears to; who is proved to have been totally mistaken in all the facts upon which he grounds even the claim to the ten per cent. that he insists upon, should undertake to swear positively to particular words indorsed on a Bond eleven years ago, and this after seeing and examining the Bond, and satisfying himself that no erasure could have been made upon it, is a circumstance, that can only be accounted for upon a supposition that he has been unwarily and artfully provoked, and wrought upon by some malignant spirit, some diabolical Assassin, who has overpowered his understanding with a design to make him an instrument to wound my character, which I trust has through life, hitherto, stood too high to fear contamination from any such attempts, however maliciously designed, however deeply plotted, or cunningly executed.—In saying this, I acquit Mr. M'Call of all suspicion of his being concerned in a transaction so infamous, and I will add that, under such impressions as must have been made upon his mind upon seeing Mr. Munday's statement and Affidavit, I can easily account for the language he has made use of, in the state of irritation he was in; and as I cannot fear any injury from it, I freely forgive him.—My resentments will be directed to the just object of them.—In the mean time, I cannot but lament that political subjects, and the party spirit roused by opposite interests at an election, should so debase the human character, as to destroy in it every principle of rectitude, every sense of the ties, by which Mankind are held together in civil society.

The Bond in question was written upon an half sheet of paper, and no suspicion has ever been intimated, even by Mr. M'Call, that any erasure was ever made upon it: indeed the Bond speaks for itself, and precludes, from the circumstances in which it appears, all possibility of any thing of this kind. The only question then that could arise, was, whether the Bond was originally written upon an half sheet; and here fortunately for me, as if a gracious Providence had interposed to defeat the machinations of the wicked, I have evidence of a nature more satisfactory than I could have expected. Mr. Nase wrote the Bond, and wrote another for himself on the other half of the same sheet, which, though it has been long cancelled, providentially for me, he has preserved. His testimony, and the certificate of the respectable Gentlemen who have examined and compared both Bonds, will be subjoined, to which I will only add one circumstance, that will not otherwise appear, that the Bond is written upon the inner page of the half sheet having the margin upon the cut edge of the paper, and written thence in lines directed to the side where the sheet was separated, which renders it, to the last degree, improbable that the Bond could have been written upon a whole sheet.

JOHN COFFIN,  
St. John, 22d Sept. 1802.

**HENRY NASE** being sworn, on the Holy Evangelist of Almighty God, to make true answers to such questions, as should be asked of him, and being asked, at the request of Mr. M'Call—whether he wrote the Bond given by Mr. Nathaniel Munday to Col. Coffin, and the Bond shewn to him—Answers, that he did write the Bond produced to him—and that, to the best of his recollection, he wrote it on only a half sheet of Paper—That he wrote one for himself, at the same time to Col. Coffin, and has since taken up his own Bond, which is now, and always was, on a half sheet, and that he thinks it most probable, that he wrote his own and Mr. Munday's Bond on the two halves of the same sheet of Paper.—On being further asked, if the Bond had been written on a whole sheet of Paper, whether the indorsement,

NATHANIEL MUNDAY, }  
To } Bond,  
JOHN COFFIN, }  
could have been made where it now is, he answered no, but that it must have been on the opposite half sheet, to that on which the Bond was written, and he further said, the said indorsement is in the hand writing of him the said

Henry Nase, and that it was made by him, at the time of making the Bond; and has not been in his hands, until this day.

HENRY NASE.

Sworn before Us, this }  
20th September, 1802. }  
WM. CAMPBELL MAYOR.  
COLIN CAMPBELL, J. P.

**WE**, the above named Magistrates, do certify that the Bond mentioned by Mr. Nase, to have been given by him to Col. Coffin, at the same time with that given by Mr. Munday, both of which were written by Mr. Nase, were both produced to us at the time of the foregoing examination, and that upon comparing the same we found them to be so alike in size, quality and wire marks of the paper, and in every other respect, that there is the strongest reason, in our opinions, to suppose, and we do believe, that the two Bonds were written upon separate halves of the same sheet, more especially as the marks of separation exactly correspond upon their being placed together.

WM. CAMPBELL MAYOR.  
COLIN CAMPBELL, J. P.

**WE** do certify that we were present at the examination of Mr. Nase, and concur in the above opinion.

JOHN ROBINSON,  
JOHN BLACK,  
CHARLES I. PETERS.

### Fresh Goods,

AT REDUCED PRICES,  
**NOW** landing and in a few days will be ready for Sale, at the Subscriber's Store on the Market Wharf,  
THE CARGO OF  
**THE SNOW ANN,**

WILLIAM YOURGHEUBAND, Master,  
from Liverpool,

Comprising a General and Extensive  
ASSORTMENT OF  
*British Merchandize,*

Selected by the Subscriber from the different Manufactories; and presumed to be worthy the attention of Town and Country Purchasers.

ALSO,  
**5000 BUSHELS SALT,**

which if taken from on board the vessel within ten days, will be delivered at the low rate of 2s. per bushel.

To prevent unnecessary applications, NOTICE is hereby given, that no Credit beyond Three, or at farthest, Six Months, can on any consideration be given.

N. B. All kinds of Country Produce taken as usual, at fair prices, and a liberal discount allowed to purchasers for prompt pay.

JOHN L. VENNER,  
St. John, 22d Sept. 1802.

### NOTICE.

**ON** Tuesday the 19th day of October next, at 11 o'clock, will be sold at the house of the Widow Vanderbeak, in Fredericton, the whole of the real estate of THOMAS STAPLE, late of the Parish of St. Mary's, in the County of York, deceased; consisting of a Lot of Land, No. 15, on the Kistwick, containing 240 acres, more or less, with a house thereon, reserving to the Widow of the said THOMAS STAPLE, her third or right of Dower in the Premises.

The same to be sold at Public Auction to the highest bidder, in pursuance of an order from His Excellency the Lieutenant Governor in Council, dated 3d September, 1802, for the payment of the just debts of the deceased, so far as the same may extend, agreeable to law.

ANDREW PHAIR,  
Administrator.  
Fredericton, 18th Sept. 1802.

### NOTICE

**IS** hereby made known to all Persons indebted to the Estate of WILLIAM VANCE, late of Maugerville, in the County of Sunbury, deceased, that they may make immediate payment to the Subscriber; And those that have any demands against said Estate, are requested to exhibit their Accounts, duly attested, within twelve months from the date hereof.

SARAH VANCE,  
Administratrix.  
MAUGERVILLE, 18th Sept. 1802.

### FOR THE ROYAL GAZETTE.

To a True FRIEND to the CONSTITUTION.

HAVING, as I conceived, sufficiently discussed the question, as to the number of Members of the House of Assembly, necessary to be present, in order to consent to the making of Laws, I had fully intended to leave all other questions to others more at leisure, and more equal to the task; but as you still address yourself to me, I am reluctantly drawn into a further correspondence with you. Allow me, before I proceed further, to ask you why the Governor is required by his commission, to fill vacancies in the Council, "if ever it should happen that there be less than seven of them residing in the Province?" The answer is plain, because seven is the major part of twelve, the whole number of the Council.—Look at the clause I allude to, and you will find, these explanatory words:—"That our affairs may not suffer at that distance, for want of a due number of Counsellors." You have, it seems, been favoured with a sight of the commission for this Province, if I am not correct, as to the number seven, you will have the goodness to set me right.

I will now undertake briefly to canvass the question of right to appoint a Clerk of the House of Assembly; in doing which, I shall first resort to the ground of usage, and then to the construction of, and the powers given to the Governor, by his commission from the King, which I consider as the Magna Carta of the Province.

The usage, in favour of the appointment by the House, has, I believe, been uniform, universal, uninterrupted in, and co-existent with all His Majesty's late American Provinces, and particularly the Province of Nova Scotia. The novelty of an appointment by the Governor, has therefore been left for this Province. The Province of Lower Canada, indeed, has followed the single, solitary example.

It will not be difficult to conceive how this usage originated, and how it has been allowed to continue throughout the long tract of time which has elapsed since the first existence of the British American Provinces. In the first place I venture to assert, that no offices of any description, have ever been held, in any of these Provinces, except Lower and Upper Canada, by patent for life, as is the case of the office of Clerk of the House of Commons.—The Governors of Provinces, holding their offices during pleasure, can scarcely be supposed to have in their gift offices, to be held by a higher tenure.—In the second place, the Governors of His Majesty's late American Provinces, and of Nova Scotia, not finding themselves expressly authorized or required by their respective commissions, to appoint Clerks for the respective Houses of Assembly, never claimed or exercised the right of making that appointment. Thus the usage alluded to, sprung up and flourished, unquestioned and undisturbed, until an unfortunate, strange plant found its way into this infant Province. Here we are perplexed with forms and precedents in no wise proportioned to our size, or suited to our habits.

Had the Governors of His Majesty's late American Provinces, and of Nova Scotia, who must be presumed always to have their commissions in their possession, supposed themselves thereby authorized to appoint Clerks for their respective Houses of Assembly, would they not have claimed and exercised that power? They most certainly would. I believe we may all venture to allow, that the love of power is a universal passion. Single individuals—bodies of men—majorities, and even minorities, are all fond of exercising that darling attribute.

The usage I contend for, has obtained the voluntary and uniform consent of all the Governors of His Majesty's late American Provinces, and of Nova Scotia, as well as that of the people, by their Representatives, in all these Provinces. In the words of Judge Blackstone, customs "receive their binding power, and the force of Laws, by long and immemorial usage, and by their universal reception throughout the kingdom," which has been the case as to the custom and usage in question, throughout all the said Provinces. It has been used so long, that the memory of no man now living, runneth to the contrary. It has the best and most natural test of authenticity, namely, universal consent. The same learn-

ed and most liberal Judge has told us "it is one of the characteristic marks of English liberty, that our common Law depends upon custom; which carries this internal evidence of freedom along with it, that it probably was introduced by the voluntary consent of the people." This precious sentiment should be written in letters of gold, and sacredly treasured up by every friend to civil liberty, and the happiness of mankind.

This view of the usage and custom alluded to, naturally brings us to the second point, namely, the construction of the Governor's commission, or in other words, of the King's grant of powers to the Governor. That commission has lately been laid before the people who are to be governed by it; and indeed read twice a year to the people, in all Cathedral Churches, but published in the Royal Gazette. Let us look into it, and see what offices the Governor is therein authorized to appoint.—From that source only does His Excellency derive all his powers.—Nothing goes to Governors *jure divino*, nor by inheritance. That commission has these words:—"We do hereby require and command you to do and execute all things in due manner that shall be long unto your said command, and the trust we have reposed in you, according to the several powers and directions granted or appointed you, by this present commission and instructions herewith given you, &c." We shall find many offices in the gift of the Governor, expressly specified and named in his commission, and some undoubtedly by necessary incidental implication; but I do not find any power therein given, either expressly or by necessary incidental implication, authorizing or requiring him to appoint a Clerk of the House of Assembly, by patent, for life or otherwise.

Lord Kenyon, in the case cited in my last address, in delivering the unanimous opinion of the Court, says expressly, "that contemporaneous usage has always been considered as of great importance in the construction of charters, a variety of cases at all times abundantly evince." The commissions of Provincial Governors being silent, as to the right of appointing the Clerks of Assemblies, stand fairly open to be explained and construed by contemporaneous usage, which, as to all the Provinces, except New-Brunswick and Lower Canada, both of yesterday, is full and completely decisive, as to the right of the respective Houses, to appoint their respective Clerks. We presume all the forms of commissions to the Governors of Provinces are alike. I venture therefore to assert, that the Governor of this Province is expressly required by his commission, "to do and execute all things," not only according to his commission, but according to the Laws to be made by the General Assembly of this Province, and those then already made, by which last words, the Laws before that time made by the General Assembly of the Province of Nova Scotia, must be understood and intended.

This Province was, when first formed and made into a separate and distinct Province, a part of the Province of Nova Scotia, and the inhabitants then resident within the now district of New-Brunswick, were at that time the proper and lawful inhabitants of the Province of Nova Scotia, and were unquestionably entitled to all the benefits of the Laws of the said Province of Nova Scotia then in force, and to all the rights, privileges, customs and usages then existing, and enjoyed by the inhabitants of that Province. The usage of appointing the Clerk of the Assembly by the House, is contemporaneous with the existence of the Legislature of the said Province of Nova Scotia, and the right of appointment, claimed by the late House of Assembly of this Province, is founded in that usage, and is corroborated and completely established by it, and ought not, nor can be controuled by any thing that has been, or can be done by any power on earth, except by an Act of Parliament, or an Act of the General Assembly of this Province. The King's commission to the Governor, neither has, nor was it ever intended by His Majesty, to take away, alter or abridge, in any possible degree, the rights or privileges of those, his faithful subjects, who resided in that part of the Province of Nova Scotia, which is now included in the Province of New-Brunswick, at the time when it was made a distinct Province. The right, therefore, of the House to appoint the Clerk of the Assembly of this Province,