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Letters

OF

A NOVA-SCOTIAN,

AND

OF SCÆVOLA

ON

CANADIAN POLITICS.

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LETTERS
OF A
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LETTERS

OF A

NOVA-SCOTIAN

THE ACADIAN

HALLEAX PAPER

1837

[FROM THE ACADIAN.]

TO L. J. PAPINEAU, Esq.

Speaker of the House of Assembly of Lower-Canada.

No. I.

SIR,

THE conspicuous part which you have so long acted in the House of Assembly of Lower Canada, must have rendered your conduct and your principles interesting subjects for examination to the inhabitants of that Province.

But the new character in which you have recently appeared, as the head of a Junto, who, after the prorogation of the Assembly, have undertaken to issue a manifesto to the people of Canada, in answer to the official Speech, with which the Governor in Chief closed the Provincial Parliament, places you before the public in a light which interests every inhabitant of British America.

It is a melancholy but momentous truth, that mighty ills may spring from trivial causes. The Conflagration which recently produced such awful desolation in one of our Sister Provinces, may have arisen from a spark dropt from the pipe of an heedless savage, or from the petty bonfire of some sportive, or perhaps mischievous urchin; and, as the political world is nearly as combustible as the materials then destroyed, it is very possible that the

struggles that a faction, of which you appear to be the head, are now making to usurp the whole power of the Government of Canada, may, if not timely repressed, involve every Colony in North America in confusion.

It is this consideration which induces me to address you thus publicly. I feel that I have a right to do so, as a Nova-Scotian, because the principles upon which you are contending with the Government of Canada, do not merely affect the local interests of that Province, but are calculated to undermine the Constitutions of every Colony that can boast of a local Legislature, modelled, as far as circumstances will admit, upon the plan of that glorious fabric, *the British Constitution*.

It is not my intention to answer the flimsy contents of your Manifesto, or to inquire to what extent the local interests of Lower Canada may have been injured by the recent prorogation of the Provincial Parliament; that they have been injured by the non-performance of important duties which the *whole Legislature* owed to the Country, cannot be doubted. That the Act of Prorogation was the Act of the Governor in Chief, is equally certain, and it is clearly the interest of the same artful and designing faction, whose machinations rendered that step indispensable, to divert the public mind from the investigation of their own conduct, by turning its attention to the immediate and direct evils and inconveniences which must flow from the Prorogation itself.

But, "*magna est veritas et prevalebit*," truth, Sir, will at length prevail, and the day I trust is not far distant when you and your colleagues will appear before the public in the light of men, who are either totally ignorant or totally regardless of their duty; of men who, under the pretext of vindicating the rights of their constituents, are violating the constitution, which secures to them their rights; of men who are endeavouring to place within the grasp of any faction that may now pos-

sess, or may hereafter acquire, sufficient influence to rule one branch of the Legislature, that power which the Laws of the land have, for the wisest purposes, divided among the three several branches.

That power which, in despotic Governments, is lodged in the hands of an individual, which in Aristocracies is vested in a privileged few, and which in pure Democracies belongs to the great body of the people, is by our happy Constitution vested in the King, his Nobles and the Representatives of his people—and it is the privilege of an Englishman, that no law shall pass which affects either his person or his property without the concurrence of his Sovereign and of both Houses of Parliament. And until it shall be proved that an Absolute Despotism, a proud Aristocracy, or a capricious Democracy, are preferable forms of Government to the Constitution of Great Britain, every inhabitant of the British Isles must feel that he has a personal interest in supporting the several and respective privileges of each distinct branch of the Legislature.

We have not on this side of the Atlantic the materials wherewith to create a perfect resemblance of this noble Structure ; our humble imitations, are however, formed upon its principles, and we have as yet, Sir, to thank Heaven, that the rights and privileges of His Majesty's subjects in America, are not placed at the disposal of any one body politic, be it sole or aggregate. We, like our fellow subjects in Great Britain, are yet equally free from the controul of arbitrary power and the caprice of popular frenzy ; and long, long may we remain so. Distant, far distant may the time be, before you or your Colleagues can convince the inhabitants of these happy Colonies, that they will increase the security for their own liberties by an unconstitutional enlargement of the power of the Representative over that of the other Branches of the Colonial Legislatures,

That the course which you have pursued in the House of Assembly of Lower-Canada has this tendency and is therefore subversive of the rights of your fellow subjects, it shall be my humble endeavour to prove in this public address to you.

The Body Politic like the natural Body must have its several and respective Members ; under whatever form of Government civil society may be constructed, it cannot subsist without its public functionaries. Those who are appointed to rule must of necessity be invested with sufficient power ; those who are delegated to administer justice must be clothed with sufficient authority, and rendered independent of the parties whose cases they are destined to decide. Indeed in all the ramifications into which executive power may divide itself, it is the object of every wise Government, to place their Officers in those situations, in which the public shall have the best security for the due performance of their respective duties.

Under some Governments it has been deemed wise to keep public Officers in a continual state of dependance, but there it has sometimes been found that men of independent minds would not enter into the public service, to remedy this evil, other countries have given power to public functionaries, which has entirely placed them above constitutional controul, and left no remedy for misconduct, but a violation of the political frame of the society that had been so imprudent.

It is not my intention to enter into the wide field which this subject would present. I pretend not to say what is the best plan that could be devised to secure the public against the degrading effects of severity in the one case, or of arrogance in the other ; but I say that the constitution of Great Britain has vested the right of appointing the several officers, which the public service requires, in the Crown ; and that it is the *first* duty of the Legislature, to provide the Crown with the means of

supporting them, because without them, the Government of the country cannot be carried on.

If the Crown makes an improvident use of the means which have been placed at its disposal, additional supplies can be withheld until it becomes more considerate. If useless offices are created, and incumbrances thereby improperly thrown upon the public, the Representatives of the people would fail in their duty, if they did not use the constitutional means which they possess to remedy the evil ; and if the House of Assembly of Lower-Canada conscientiously deemed the whole civil list too expensive, or any particular office or offices unnecessary, who would dare to blame them for manfully pointing out the general or the particular instances of extravagance, and for withholding a grant which would enable the government to continue a degree of expense which they conscientiously thought the public service did not require.

But this is not the matter in dispute, it is not to relieve their constituents from taxation, but to encrease their own power that they are contending ; they are perfectly willing to grant the *whole sum* required to pay these officers, provided they can make the officers themselves dependant upon them. Yes Sir, the efforts of yourself and of your colleagues have this tendency, and can have only this tendency, and this I repeat, is an attempt to effect an unconstitutional enlargement of the power of the representative over the other branches of the Legislature.

It is an attempt to transfer to yourselves that power and that influence which the constitution has vested in the Crown, to make every officer of the Government, even the King's representative himself, depend upon an annual vote of the Assembly for a precarious support, and to create a virtual democracy in its most unqualified and worst shape ; to give to us the mere *form* of a mixed Government, in which we would vainly look for that

stability and those high sentiments which the monarchical part of our constitution is calculated to infuse, while all the real power of the country would be in the actual possession of a factious Oligarchy. This, Sir, I say, would be democracy in its worst shape, for it would be Democracy in disguise. Where all power is *avowedly* derived from the people, those to whom they delegate it are avowedly and ostensibly responsible for the exercise of it. But if the House of Assembly of Lower-Canada could succeed in making the representative and all the officers of Government entirely dependant upon their will and pleasure for support, they would reduce them to mere puppets, who would be obliged to do their will, and upon whom they might cast a large portion of the odium of those measures which they could not refuse to adopt; the balance of the constitution would be gone, the checks and counterpoises which have been wisely introduced into it, would be swept away, and instead of that permanence and consistency which now characterises our colonial constitutions, we should see one wild or selfish scheme succeed another as rapidly as one set of demagogues could supplant their rivals.

I would ask the good people of Canada if they desire this change; and I would ask you sir, if you dare to deny that it would take place if your measures should succeed.

Where would the influence, the power or the Dignity of the Crown of Great Britain be, if the King were obliged to apply to his Parliament, every year, not only for the means of supporting his Ambassadors in foreign Courts, his great officers who conduct the affairs of the nation, his judges who administer the criminal and civil law of the country—but if I may use the expression, for his daily bread, for the supply of his table, his food and his cloathing. No, Sir, the English Nation know that this would be as derogatory to their dignity as it would

be to that of their Sovereign, and therefore it is the first act of the Parliament, upon every new accession, to vote a sum commensurate with these various services, in order to render the King independant for life, and thereby to enable him to perform *with independence*, the important functions which appertain to his high Office in in the State.

But, you Sir, would deprive his Majesty of all these advantages in Canada, you would reduce his representative there, to depend upon the annual vote of the Assembly for the supply of his personal wants, and would render all those Officers who should look to him with respect and deference, and who should be responsible to him as well as to you for the faithful discharge of their respective duties, to a servile dependence upon any set of Demagogues who might become the guiders of the popular feelings of the day.

Let it not be supposed, Sir, that the person who addresses these observations to you, is an advocate for passive obedience or unlimited power. I would wield my pen, and if reduced to the necessity, I trust my sword also in defence of the Constitutional rights of an English subject, whether they were violated by the Despot or the Demagogue; but in the present case, I feel that the latter is the assailant, and I will, in behalf of myself and of my fellow subjects, resist him with all my might.

Away, Sir, with the pretensions of loyalty which you and your colleagues hold out in your Manifesto. The loyalty of our English subjects consist not in empty declarations. We look for deeds, not words. If you really think it would be conducive to the public interest, to deprive the executive of its constitutional authority and influence, and to vest it in the representative Branch; honestly declare yourself a Democrat, and let your constituents decide whether they concur in your political sentiments, but if you pretend, Sir, to be a loyal subject

of the King of England, and to be actuated by the genuine spirit of patriotism, remember that respect for the power and the legitimate honour of the Sovereign is essential to loyalty.

All Englishmen can be devoted to their King without servility, and as the religion which I understand you profess, vindicates itself from the charge of idolatry, by asserting that the image before which the Catholic bows, raises his mind more powerfully to the God whom he adores—so a genuine English subject feels that his loyalty to his King proceeds from no servile motives. In the person of his monarch—he sees his country embodied, and feels conscious that in upholding his dignity and legitimate authority, he essentially contributes to the preservation of his own rights, and to the independence and power of the nation over which his sovereign presides.

But you, Sir, and your associates, would undermine this power, you would sap the foundations of the monarchy in Canada, by rendering the King's Representative and all his Majesty's servants in that country, immediately and continually dependent upon yourselves, and consequently subservient to your views.

Could the King's Representative exercise with independence those important prerogatives with which the constitution has vested him for the benefit of the people, when he was himself entirely dependent for support upon a body whom it might sometimes become his duty to controul? Could the administrators of justice decide a cause in which a popular demagogue, or one of his adherents, was concerned, with requisite impartiality, when the support of themselves and of their families might depend upon the friendship or partiality of the litigious party, in the next session of the Assembly? I admit, Sir, that men of stern integrity may be met with, who will rise superior to all feelings of interest, and adhere in-

flexibly to the path of duty. Such men, sir, are an honour to human nature, but it is a melancholy truth that we cannot expect to meet them at every corner. The codes which regulate civil society are not formed for perfect beings, and that system is most faulty which places our duty in opposition to our interest.

I close this letter, Sir, with a solemn call upon you to act consistently. If you are a democrat in principle, and really think that it would be desirable to lodge the whole power of the Government in the elective Body, I repeat it, avow your sentiments, and we shall respect your honesty if we cannot admire your judgment: but do not treacherously attempt to undermine that Constitution which you ostensibly profess to support; do not deceive your constituents with declarations of loyalty to your King, when your every effort is directed to the destruction of his authority; for remember, Sir, that

“The question still at issue, let it be stated in whatever form the ingenuity of human mind can devise, is reducible to this.”—Shall the Inhabitants of Canada retain a Constitution which the wisest Statesmen and soundest Philosophers have pronounced to be the best preservative of civil liberty; shall they retain those checks and counterpoises by which the three independent Branches preserve the people from the effects of arbitrary power, or shall they allow these three Branches virtually to merge in one, and thereby substitute an actual Democracy for the mixed Government under which British subjects have hitherto lived in peace and security?

A NOVA SCOTIAN.

To L. J. PAPINEAU, Esq.

Speaker of the House of Assembly of Lower-Canada.

No. II.

SIR,

In my last letter I told you that I felt authorized to address you as a Nova Scotian, because the rights which you were endeavouring to wrest from the Crown in Canada are vested in His Majesty for the benefit of his subjects, and I dreaded the effects which an evil example in one Colony might produce in another.

But I feel more particularly authorized to address you in that character, because the system adopted in Nova-Scotia has been frequently alluded to by your party, and an attempt has been made to convince the Canadians that you are only contending for principles which are carried into practice in a sister Colony.

I would in the first place, remind you that no offer has been made to His Majesty's Government, by the Assembly here, to take upon themselves the burthen of the Civil List. Had such an offer ever been made, I will venture to predict that the pledge would have been redeemed with good faith.

My knowledge of the men whom the people of Nova Scotia have generally chosen for their Representatives, induces me to think, that if an unconditional offer to relieve the mother country from the burthen of supporting the Officers necessary for conducting the public business had been made from this Province, the Assembly, after such offer had been accepted, would not have refused to grant the necessary supplies, unless they were

received upon terms subversive of the Constitution which the king had bestowed upon us.

Our Governor and many other officers in Nova-Scotia, are still paid by the mother country. The salary of the King's Representative here does not depend upon the fluctuating feelings of those over whom he is sent to preside ; and remember, Sir, that the principal Officers of the Government in Canada, were equally independent of the House of Assembly there, when it made the offer to provide for them. The offer was unsought—was altogether voluntary—it was unclogged with any condition, and independent of those honorable feelings which induce highminded men rather to overstep than stop short of the full redemption of their pledge, common honesty—ordinary fair dealing, required that it should make no difference to them whether they were to be paid for their services from the British or the Canadian Treasury.

Should you ask, Sir, why I feel so confident that the House of Assembly of Nova-Scotia would have pursued a more honorable path, under the same circumstances, than that which the Assembly of Lower Canada has followed, *te duce*—I answer, because that, as far as their SITUATION has been similar, their conduct has been different.

Until your offer to pay your Civil List was accepted, no Colony in North America paid so many of its public Officers as Nova Scotia. With the exception of the Chief Justice, the whole judicial establishment is borne by the Province. At an early period two Assistant Justices of the Supreme Court were appointed, and salaries voted annually for their support, but the country was soon convinced of the impropriety of making them thus dependent, and in the year 1789, when the Treasury of the Province was at its lowest ebb, the House of Assembly, without any application from the Executive Government, passed a Bill, entitled, "An Act for the better support of the " Puisne Judges of the Supreme Court," by which their

salaries were *permanently* fixed at the sum of £400 per annum. The preamble of that Bill, Sir, is not inapplicable to our present subject, it runs thus—" *Whereas the independence and uprightness of the Judges are essential to the impartial administration of justice, and has ever been considered as one of the best securities of the rights and liberties of the subject; in order, therefore, to make a suitable provision for such appointments, and establish the permanency thereof, Be it enacted, &c.*"

If the sentiments of this preamble, Sir, are sound, and where is the English subject who will say that they are not, can the Canadians deem that their liberties are placed by their representatives upon the same solid basis on which those of the Nova-Scotian rest; and if they are not, it is to you and to your Colleagues, that their thanks are due, for depriving them "*of one of the best securities of their rights and liberties.*"

It is worthy of remark that the House of Assembly who originated this bill, was one of no servile character; at that very moment they were impeaching the judges for misconduct; but, while they accused the men, they respected the office, and therefore, to make it respectable in the eyes of others, they made it independent.

Twenty years afterwards, in the year 1809, an Act passed to authorise the appointment of another Puisne Judge, and the salaries of the three were then raised *permanently* to £500 instead of £400 per annum.

In the year 1816, an Act passed to authorize the appointment of an Associate Circuit Judge, with a *permanent* salary of £400 per annum.

In the year 1822, the salaries of the Puisne Judges, in consequence of additional Circuits, were again *permanently* increased to £600 per annum.

In 1823, provision was made for the appointment of a Chief Justice for the inferior Court of Common Pleas in

Cape Breton, with a *permanent* salary of £500 per annum, including £100 allowed for travelling charges.

In 1824, further provision was made for three Justices of the Inferior Courts of Common Pleas, in the eastern, middle and western divisions of Nova Scotia, with *permanent* salaries of £450 per annum, including travelling charges.

And in the year 1826 an Act was passed to provide a *permanent* salary of £600 for a Gentleman, then recently appointed by His Majesty, to be Master of the Rolls in Nova Scotia.

I have gone through this detail to convince you, that it is by no means the practice in Nova Scotia, to provide *temporary* salaries for *permanent* Officers. The necessity of creating the office is indeed well discussed, and the creation of many of those I have enumerated, was warmly opposed in the House of Assembly, but when the question of the appointment was carried, the opponents never dreamt of rendering the person to be appointed, dependent for his support upon an annual vote, from which either branch of the Assembly might withhold its assent.

The emoluments of the Collector of the Provincial Duties are likewise established by a permanent law, and if you will read the report of the Debates which took place in our House of Assembly last session, upon the interesting subject of the salaries of the officers of the Customs, which display a degree of talent, loyalty and independence of mind, highly creditable to the Province, you will perceive that amid the conflicting opinions which prevailed upon the subject, no one desired to render these respectable and responsible servants of the Crown, dependent upon an annual vote of the Assembly. On the contrary, those who supported the legality of the order of the Lords of the Treasury, to retain a portion of the duties for the payment of the Officers, urged

the necessity of fixing *permanently* the amount which should *annually* be retained, and those who opposed that order, and contended that the Legislature here, could alone authorize such retention, proposed that a sufficient sum should be *permanently* appropriated out of those duties, to enable His Majesty to defray the annual expense of the establishment.

The salaries attached to these Offices, you may perhaps say, are far inferior to those which are paid to similar Officers in Canada; *but remember, Sir, that this is not a question of pounds, but of principles*; it is not *how much* shall be annually paid for the support of the Civil List in Canada, that is in dispute between the Representative Branch and the Executive Government, but whether that sum, whatever its amount may be, shall be voted *annually* or *permanently*. The House of Assembly of Nova Scotia have given to these officers, such sums as they thought the country could afford to pay for their services—they could not afford to make them rich, but, sensible that they themselves could not perform the duty which they owed to the public, unless that they were independent, *they were desirous that others who had important duties to perform should be independent also*—remember that those “*Who rule o’er freemen should themselves be free.*”

They would not expose men, who were to decide upon the rights and liberties of their fellow subjects, to the temptations which might beset them, if any of those upon whose will the remuneration for their services *annually* depend, should appear as suitors before them—even those therefore, who were opposed to the creation of the Offices, concurred in rendering the Officers independent.

The subordinate question which has sprung out of your original refusal to provide *permanently* for the ordinary expenses of the Country, viz. whether the House of Assembly have not a right *annually* to appropriate, in items,

the sums which have already been personally appropriated in gross, for the payment of the expences of the administration of Justice and of the support of the civil Government in Canada, by the Act of Parliament, 14 Geo. III. cap. 88—and the Act of the Legislature of Lower-Canada, 35 Geo. III. cap. 9—has been so satisfactorily answered in a pamphlet, published in Quebec in the early part of this year, that I deem it unnecessary to make any further comments upon it, than merely to observe, that had the Assembly fulfilled the promise which they voluntarily made, in the spirit in which it must have been understood by his Majesty's Government, when their offer was accepted, this question could never have arisen.

If the Assembly will now redeem their pledge, and permanently provide for the whole of the Civil List, there can be no doubt that the proceeds of the duties imposed by these Acts FOR THE SAME PURPOSE, will go in aid of the general funds of the Province, in the accomplishment of this object.

But if the House persists in the *unconstitutional* course, into which you and your Colleagues have led them, nothing remains for the Government, but to avail itself of the small funds, which these Acts have fortunately placed at its disposal, and thereby avert the calamity of rendering the monarchical part of the Constitution entirely dependent upon the Democratical.

But beware, Sir, how you persist in this course, popular favor is a precarious possession. The Government has taken its ground and it cannot recede without basely committing suicide. It is not the measure of this or that Governor which you are engaged in opposing. His Majesty cannot authorize any Governor to accede to a system which will not only destroy all his authority in this country, but is subversive of every principal of every Government; for, as the author of the Pamphlet, which I have before alluded to, pointedly asks—"Is there an instance on record, in the history of any nation, in

" which *all* the expences of its annual Government is left
 " to the risk of an *annual* vote? there is none, even a-
 " mong the most republican. It is a power of self des-
 " truction, which no people, Legislature or Govern-
 " ment, ever did or can trust itself, or any of its compo-
 " nent institutions, *annually* with, for it would be an-
 " nually to endanger its own existence. Do not the
 " United-States furnish an example of the kind? The
 " expenditure of their civil Government, essentially re-
 " publican as it is, is on a footing which none of the con-
 " stituent branches of its constitution can shake, with-
 " out the concurrence of the others. Whatever other
 " points may agitate the Body Politic occasionally, all
 " conceive, that the ordinary operations of Government,
 " must go on independently of them, and that these
 " shall not be left to the chance of being suspended by
 " annual misunderstandings, with any branch of the
 " Legislature, on any contingency, however important."

A time will come, Sir, though misrepresentations may
 too long delay it, when these sound and forcible observa-
 tions will present themselves as self evident truths to
 the minds of the Canadian people; and when that time
 does arrive, what Sir, will they think of you and your
 Colleagues? *when they look round and see that all public
 business has been suspended, that all public improvement
 has been impeded, that discontent and discord have been
 introduced among a peaceful and a happy people, WHAT
 WILL THEY SAY TO THE AUTHORS OF ALL THIS MISCHIEF?*

It is true, Sir, that you and your Colleagues may craf-
 tily evade the arm of justice, and avail yourselves of
 professional skill to keep within the utmost limits of the
 law. Your persons then will be safe, but your political
 characters will be blasted, you will be driven from public
 life, and although you may find shelter in obscurity from
 the execrations of those whose peace you have so long
 disturbed, whose prosperity you have so long obstructed,

you will not carry into retirement those reflections which alone can support us in solitude, that conscious rectitude which can defy the frowns of the world. *But the Governor in Chief, whose duty it has become to oppose your measures, cannot shrink into obscurity—placed by Providence in a conspicuous station, he must perform the important duties of his High Office. He cannot allow the constitution to be destroyed by the machinations of a faction. He must therefore manfully remain at his Post, endure the temporary obliquy which misrepresentation may cast upon him; and supported by the consciousness that he is engaged in the faithful discharge of his duty, may quietly await the time when truth shall have found its way into the breasts of those whom faction has misled, and he will then receive the thanks of a grateful people, for the firmness with which he has defended that constitution which bestows upon them such invaluable privileges, for his care of them, and for his fidelity to his King and Country.*

When that time does arrive, Sir, and the people of Canada calmly review the conduct and character of the Nobleman who now holds the reins of Government among them, and who so resolutely resists all attempts to substitute a virtual Democracy for the Constitution which the Parliament of Great Britain has bestowed upon them, they will then learn to appreciate his worth, and should they then recollect that he presided for several years over the Government of this Colony, they will not wonder at the earnestness with which he is defended by

A NOVA SCOTIAN.

—
To L. J. PAPINEAU, Esq.

Speaker of the House of Assembly of Lower-Canada.

—

SIR—It was not my intention to have addressed a third letter to you ; the object of my first was to convince my fellow subjects on this side of the water, that the claims of yourself and of your party were inconsistent with the general principles of the Constitution, and could not be acceded to without endangering the whole fabrick—and in my second I endeavoured to shew that the practice of Nova-Scotia afforded no precedent to support the unconstitutional principles, which you had induced the House of Assembly of Lower-Canada to adopt.

I stated in the outset that I had no wish to interfere with the internal concerns of Canada, but was desirous of warning the public against the mischievous effects of your political doctrines. I expressed my apprehension, that if your efforts to subvert the constitution of your own Province were not timely repressed, that the evil might extend to other Colonies ; and I felt it to be the duty of every good subject, who foresaw the possibility of such a calamity, to give the alarm to those who might be injured by it ; as much as it would be the duty of a good neighbour to awaken his fellow townsmen, when he saw a fire approaching their dwellings.

But although I strongly suspected that there was a design lurking in the breasts of those who had involved Canada in such trouble, to extend the evil farther ; although I did think that it was *mere folly or misapprehension of their rights*, that urged the leaders of the Faction into such disastrous measures, I must own that I

did not suppose that they would so soon lift the veil, and boldly acknowledge their mischievous designs.

The language, however, of the Canadian Spectator of the 31st of March last, is too decisive to leave us any longer in doubt upon the subject. This official Journal of your party, openly calls upon the inhabitants of Canada to take the usual preliminary steps to a revolution; to remain no longer satisfied with seeking redress for their supposed grievances, from the regular constituted authorities of the country, but to organize a new power, to establish Committees in every Parish and County, to establish a central (and of course superior) Committee also, and not satisfied with thus laying the foundation of a revolution in Canada, to send Commissioners to the several Houses of Assembly in the Sister Provinces.

You must excuse me, Sir, for identifying you with the Conductor or Conductors of this Paper; it speaks the language of your party, and as it vindicates the insidious and more concealed attempts by which you have endeavoured to destroy the Constitution in your Legislative capacity, it would be too great a demand upon our credulity, to ask us to acquit you and your Colleagues of participating in the sentiments which it endeavours to diffuse, and the violent practices which it recommends to the adoption of the Canadians.

And why, sir, are the bonds of civil society thus attempted to be broken? why are all the miseries attendant upon the subversion of a regular Government, to be inflicted upon a people who have so long confided to you the care and protection of their persons and their peaceful homes? *Because, forsooth, the Government now in existence, will not surrender to you and to your faction its legitimate rights; because the head of that Government will not consent to divest himself of the independence with which he is invested, to enable him to perform his distinct and important part in the Legislature; because the King's*

Representative will not allow himself and all the other Members of the Government, Executive, Ministerial and Judicial, to be completely under the controul and influence of a single branch of the Legislature ; because, to repeat what I have before observed, he manfully resists your attempts to convert that mixed Government which English subjects have ever deemed their best security against arbitrary power into a mere democracy.

For shame, for shame, rash man ; blinded as you may be by party zeal, intent as we must suppose you upon personal aggrandizement, you cannot have been so completely engrossed by your mischievous pursuits, as to have passed entirely unnoticed the calamitous events of your own times ; you must have known (and what human being who has known can ever forget them) the horrors of the French revolution ; and if you have a moment's leisure to spare from the performance of the part which you are acting in the political Drama in Canada, look I beseech you, to the scenes of misery which are now passing in South America, and ask yourself if you are willing to take the awful responsibility of risking the introduction of such horrors into your native land.

The dissolution of a regular Government, even where its vices and oppression render such a measure necessary, is ever attended with misery ; but as the human frame must sometimes submit to the most painful and dangerous operations, in order to rid itself of that which would prove its destruction if retained, so the political frame must sometimes undergo the miseries of a revolution for the same salutary purpose.

When it pleases an inscrutable Providence to impose such afflictions on individuals, or upon nations, it becomes the sufferers to endure them with fortitude, and to endeavour to extract from them that good which frequently flows from what we deem evil. But should we not look with horror upon the wretch, who for the mere

purpose of an anatomical experiment, would inflict such torture upon a fellow creature where no disease existed ? and if so, what must we think of those who would expose a whole community to the miseries attendant upon a revolution to gratify personal ambition or political animosity ?

I repeat it, Sir, I am no advocate for blind submission — If our rights and liberties are invaded, either by foreign or domestic enemies, I admit to the fullest extent, when all other remedies fail, the awful right of appealing to the God of battles. Let them, however, who make this dread appeal beware that they have justice on their side, for whatever may be the result of it here, its consequences will fall upon the guilty heads hereafter.

I address you, Sir, thus seriously, because I would wish you to recollect, that when you and your confederates have once embarked in the first revolutionary step of assembling Parochial, County, and Central Committees, it will no longer depend upon you to decide to what lengths they shall go. When public bodies, who have no constituted authority, are once convened and become as they usually do, infatuated with their own assumed power and importance, they soon refuse to submit to the controul of those who brought them into existence, and not unfrequently return that favour by terminating the existence of their Creators.

But should no such tragical event befall you, should the tide of your popularity not ebb, until you had been borne by it to the very pinnacle of Democratic ambition, should the torrent of a successful revolution place you at the head of a new Republic, I will venture to predict that the first application of President Papineau to the Canadian Convention would be, to provide the means of supporting the new government which they had created ; and he would then feel the necessity of rendering such public functionaries as the new system required, independent of popular caprice ; he would point out to them the

example of their republican neighbours in the United-States, and remind them that the existence of the *Nation Canadienne* must not be annually endangered. It cannot be doubted, Sir, that should such a lamentable measure as the severance of Canada from Great-Britain take place under your auspices, that you would then become the advocate of the very measures which you are now opposing with so much vehemence.

I do not, however, anticipate such an event, I have too good an opinion of the loyalty and good sense of my Canadian fellow subjects to suppose that they will allow themselves to be so far borne away by misrepresentation; and I feel confident that when they are once awakened to a sense of their situation, to which you and your Colleagues have reduced them, and see the real merits of the case, that they will no longer repose confidence in men who have betrayed the country into such evils.

In respect to the second proposal, of sending Commissioners to the Houses of Assembly in the sister Colonies, the fury of party spirit has hurried you on with too much impetuosity to make the measure dangerous; *you have incautiously opened the eyes of those you wish to delude, and you may rest assured, that the good people of Nova-Scotia will feel no inclination to follow the dangerous and unprofitable path in which you would lead them.* I think if your Commissioner were to present himself at the bar of our House of Assembly, he would be thus addressed:—

“Return, friend, to those who have delegated you to address us, and tell them that we do not think they have managed their own affairs so successfully as to induce us to seek their advice in the management of ours. This peaceful and prosperous Province was long under the Government of the very person of whose measures you now complain; we always found him the guardian, rather than the violator of our rights; we respected the legitimate powers with which the constitution invested him,

and we never perceived the slightest wish on his part to invade the privileges which that constitution bestows upon us. We believe that if you would be equally cautious to abstain from aggression, that you would now enjoy the same peace and happiness under his government in Canada, that we did during the period he presided over us in Nova-Scotia. But we have no desire to interfere with your internal concerns, and we request that there may be no interference on your part with ours; we sincerely regret the unhappy consequences of your differences, but we cannot heal, and do not wish to participate in them. We will, however, give you this friendly advice, adhere to truth in your statements, those who first recommended your appointment as a Commissioner to address this assembly, assert that the government in Canada claims "*the uncontrolled dominion over the taxes*,"* this we know to be false; and a good cause needs not the aid of falsehood. The government merely requires that *all three Branches of the Legislature*, should concur in providing *permanently* for the ordinary expenses of the government, and as we never heard or read of a government in which that was not done, we cannot think the demand so unreasonable, as to justify the clamour which has been raised against it in your Province."

If after this admonition, Monsieur, the Commissioner, did not retire and cease from further attempts to interfere with the proceedings of the Assembly, I suspect there would be no necessity for the Executive Government to interpose its authority. The House would probably direct the Speaker to authorize the Serjeant at Arms to provide the gentleman with lodgings in the County Gaol, for the remainder of the Sessions.

That such would be the course pursued in Nova-Scotia, is the sincere opinion of A NOVA-SCOTIAN.

* See the *Canadian Spectator* of March 31st, 1827.

No. IV.

To the Editors of the Acadian.

Gentlemen,

In the Letters which I have addressed to Mr. Papineau, through the medium of your paper, I did not deem it necessary to enter into a *detail* of facts, with which that gentleman is well acquainted, but applied my observations to the general state of Canadian Politics—But as the affairs of that country are becoming every day more interesting to the Inhabitants of this, it may not be an useless occupation of your columns, to insert in them a more minute account of the proceedings in Canada, than has hitherto been published in Nova-Scotia.

The Province of Quebec, as your readers well know, was originally acquired by conquest—but when the City surrendered by capitulation, the terms of it secured to the Inhabitants their religion and their laws. His Britannic Majesty succeeded to the rights and the power which the King of France had previously possessed, and became entitled to certain Duties and other Royal Revenues, which then existed in the country—the proceeds of these duties and revenues were applied to defraying the expences incurred for the support of the Provincial Government, the Administration of Justice, &c. but as they were inadequate to that expence, the deficiency was made up by sums drawn from the British Treasury. In the year 1774, an Act of Parliament was passed by which the duties imposed by the Ordinance of the French King were repealed, and other duties upon the import of Rum, Brandy, Molasses, &c. were imposed and *granted* to the King in place of the former duties *to defray the expences of administering justice, and for the support of the Civil Government in Canada.* These duties, though deemed more convenient than those for which they were substituted, were still, like them, inadequate to the payment of the whole expence of the Provincial Government, and the balance as before, was paid by Great Britain.

In the year 1791, in consequence of the urgent application of the English Inhabitants of Canada, an Act passed the British Parliament, conferring upon the Canadians a local Legislature framed upon English principles—consisting of a Governor a Legislative Council, appointed by the King for life, and a House of Assembly to be elected by the people.

This last Act, however, not only did repeal the 14th Geo. III. before-mentioned to have passed in 1774, but expressly provided that all Laws, Statutes and Ordinances, then in force in the Province, (excepting those repealed by the Act, among which the 14th of Geo. III. was not included) should continue in force until lawfully repealed. The 14th Geo. III. has never been repealed, and the duties payable under it have been collected from the year 1774 up to the present day, and applied under the King's authority, to the payment of the salaries which His Majesty deemed it proper to allow, to the respective Officers of the Civil Government in Canada. After the new Constitution was thus conferred upon the Canadians 1791, the expences of the Civil Government, and of the administration of Justice, were borne as before—the Duties collected under the 14th Geo. III. and the other Royal Revenues, were paid into the King's Chest, for the purposes of the Act, and still proving inadequate to their object, the deficiency was paid as usual, by Great Britain.

In this state things remained, until the year 1810, when the House of Assembly (for what reasons they know best) addressed Sir James Craig, the then Governor in Chief, and informed him *that they lamented having been so long a burthen upon the generosity of the Mother Country, but that they were now able and willing to relieve her, by paying the whole Civil expences of the Province.*

Sir James Craig, in reply, stated that he considered their offer as a sure pledge of their future good disposi-

tion, whenever His Majesty should see fit to call upon them for the payment of such expences.

The offer was of course communicated to His Majesty's Government at home, but as the momentous struggle in which the country was then engaged, engrossed the attention of the Ministry, no notice was taken of it, until Peace was established in Europe, and retrenchment became the order of the day. This offer then was no longer overlooked, and Sir John Sherbrooke, who was then the Governor General, was directed to apply to the Assembly in Canada to redeem their pledge, and provide for expences of the Civil Government of the Province.

Let us here pause and consider the actual state of things at that time.

The Legislative power in Canada was then vested in a Governor, a Council, and a House of Assembly. The Governor enjoyed a fixed salary, over which neither of the other Branches of the Legislature could exercise any controul, and he could therefore perform the duties of his office with independence, and without the fear of suffering in his pecuniary affairs, if he should conscientiously differ in opinion, either from the Council or the House of Assembly.

The Chief Justice, who in that Province, as in this, is ex-officio President of the Council, also enjoyed a *fixed* salary, and was equally independent in the performance of his Legislative and Judicial duties, and as it has always happened, and will probably ever happen in those Colonies, that other officers of Government should have seats at the Council Board, those Members could also perform their Legislative duties without fear of pecuniary loss.

The whole of the Judges had also established salaries, and had no reason to fear the frowns of an influential

Member of the Council, or of a popular leader of the House of Assembly, they could therefore distribute justice impartially, even when such characters appeared before them.

Now I would ask was it desirable that this state of things should be changed ? I address not the question to those, if any such there be among us, who prefer a positive Democracy to our mixed Government—but to those reflecting advocates for rational liberty, who, while they deem a branch composed of the representatives of the people, indispensable to the preservation of our rights—who, while, they contend that no law *shall* be enacted without the consent of those whom the people have selected for their guardians, still remember that the page of history affords convincing proof, that the preservation of civil liberty cannot with safety be solely committed to the fluctuating will of a popular Assembly—to the violence of well meaning, but of heated minds ; to the vibrating councils of those, who depend for their political existence upon the caprice, the prejudice or the partiality, of a thoughtless multitude, who are sometimes offended with the very measures which are most conducive to their interests, and which have been adopted from the purest motives. Such men are satisfied that while the rights inherent in the popular branch, secure them against the enactments of arbitrary and oppressive Laws, the power constitutionally vested in those who possess more permanent seats in the Legislature, equally secures them against the effects of incessant change ; and that the authority vested in the King's Representative, gives stability, consistency and energy, to the whole operations of the Government.

These are the views which English subjects take of their happy condition ; their love of liberty is earnest but rational. It is not a mere hurling of caps in the air,

with a *viva ! viva* for the Demigod or the Demagogue of the day, that indicates the genuine spirit of freedom. It is that fixed and sober determination to preserve Institutions which have stood the test of experience, which have long been consecrated at the shrine of liberty, which unnerve the arm of power, when stretched forth to oppress the innocent, but invigorate it when it is raised to controul the lawless or to punish the guilty.

Such Institutions are ours, and the advantages we possess, flow from our having three *independent* branches in our Legislature, all of whom must concur before any Law can be enacted to affect us, and each of whom have, of course, a right to *consider* before they concur—a right did I say, a duty, a solemn duty, for the performance of which they are responsible to their God, their country and their Consciences.

Now can this right be exercised, can this duty be performed, if two of these branches are reduced to a state of dependence upon the third ? and if the House of Assmby can annually vote or withhold, as they shall see fit, the Salaries of the Governor, of the President of the Council, and of the other officers of the Government, who have seats at that board, would not these two branches become thus dependent ? The question admits but of one answer,—they would most undoubtedly.

What then I would further ask, was the duty of the House of Assembly, when this application was made to them ? If the pecuniary circumstances of the country had changed since the offer, and they considered themselves unable to fulfil their promise, they should have candidly stated the disability which their altered situation had occasioned—but if they did feel themselves equal to the redemption of their pledge, and they have never insinuated that they were not, they should at once have placed those high official characters, in the same situation of inde-

pendence on the House of Assembly, in which they stood when that House made the offer to pay their Salaries. The country would then have remained in the same situation in which it had heretofore been. The Governor and Council would have continued independent of the House of Assembly. The House would have continued its legitimate controul over all the extraordinary expences of the country. No new tax could have been imposed which did not originate with them, nor could the proceeds of such tax, or any other unappropriated monies in the Treasury, be expended without their sanction. Canada in fact, would have retained its Constitution in full vigour.

Sir John Sherbrooke called upon the House of Assembly "to provide the sums necessary for the ordinary annual expenditure of the Province in a *constitutional manner*."

I would here remind my fellow subjects of the practice, which now prevails under the British Constitution in the Mother Country. Our Monarchs formerly had large personal possessions and revenues, which enabled them to support their dignity, and pay the ordinary officers of State, and of the Household, independently of those subsidies which were granted to them by their subjects to enable them to defend the Realm against invasion, to carry on foreign Wars, or upon other *extraordinary* occasions; but this *private* or *personal* wealth, if I may so term it, is no longer possessed by the Crown; improvident grants had from time to time diminished it. But had the whole of it been carefully retained, the altered state of society would have rendered it inadequate. The King, therefore, now derives not only the means of defraying the extraordinary expences of the country, but those of supporting its ordinary expences also from the Parliament. His former *private* sources of wealth are surrendered to the public, and in lieu of them his people,

upon every new accession, always make a grant to the King for his life, of an annual sum to defray the ordinary expences of his Government and of his household—leaving it to him to apportion that sum as he shall see fit to the respective Officers of Government. The salaries of his Ministers, of his Ambassadors, of his Judges and other Officers, are, therefore regulated by him and not by the Legislature. Parliament *limit* the amount of the whole sum. The King *expends* it as he deems proper, and this is the *constitutional manner* of supporting the Government in England, and by this means the officers of the Crown do not depend upon an annual vote for their support.

The House of Assembly knew, or ought to have known this, when they made their offer to pay “the whole civil expences of the Province” and they also knew or ought to have known, the amount of the expence which this offer, if accepted, would entail upon them. The King had long regulated the Salaries which were paid to the Governor and other Officers of the Government, partly out of the sums raised in the Province, under the 14th of Geo. III. and *granted to him for that purpose*, in lieu of the duties to which he was formerly entitled, and partly out of sums placed at his disposal in the British Treasury. When the Governor, therefore, called upon the House to grant the sum required for the support of the Civil Government in a *constitutional manner*, he evidently called upon them to make a grant which would render the Officers of the Civil Government *independant upon an annual vote*: and I ask every fair man if they had not pledged themselves to do so, by their voluntary and unqualified offer to pay “the whole civil expences of the Province.”

The course pursued by the House was rather extraordinary, after expending ample time in debate, to have enabled them to have matured a permanent system, they

presented an address to Sir John Sherbrooke, "representing to His Excellency that the House having taken into consideration His Excellency's recommendation on the subject of the Civil Government of the Province for the year 1818, have voted a sum not exceeding £40,263 8 9, currency, towards defraying the expences of the Civil Government of this Province for the year 1818, *exclusive of the sums already appropriated by Law*, but that the peculiar circumstances which have prevented the House from receiving at an earlier moment the Estimate of the Civil List, Revenue and Public Accounts, and the advanced state of the Session, not admitting the passing of a Bill of appropriation for the purpose, they pray His Excellency will be pleased to order that the said sum, not exceeding £40,263 8 9, currency, be taken out of the *unappropriated* monies which now are, or hereafter may be, in the hands of the Receiver General of this Province, for the purpose aforesaid, and assuring His Excellency that this House will make good the same at the next Session of the Provincial Parliament."

The peculiar circumstances of the Session, were here assigned as the reason for not passing a Bill, (whether permanent or temporary however is not mentioned) in pursuance of His Excellency's Message, but a sum is placed at the disposal of the Crown, in addition to the sums already appropriated by Law, which must have meant the proceeds of the duties imposed by the 14th Geo. III. and of a permanent Provincial Act, passed for the same purpose, 1795. No attempt was made to *apportion* either the appropriated duties or the sum of £40,263 8 9, among the different Officers of Government, it was voted in *gross*, to the Crown, and left for the King to dispose of as he had heretofore done. And it is still more important to observe that no complaint is made of the *amount* of the Estimate or of any of the Salaries it contained.

Under these circumstances the Civil Government was supported for 1818, and the public officers were paid the salaries which the King had originally assigned to them.

But in 1819, the House of Assembly passed an *annual* Bill, specifying every item or salary attached to each office for the year, omitting some of the less important offices, in order to shew their *power* of omitting others of more importance, when they should see fit—but not altering the salaries heretofore paid to the Governor, and others who were included in the Bill.

This Bill was rejected by the Council, who at once foresaw the state of dependence upon the House of Assembly, to which such a system would reduce the King's Representative and the whole Government.

From that period to the present, the House have persisted in their attempt to reduce the whole Government to this state of annual dependence upon them—and now, not only refuse to grant the necessary supplies, unless their right to determine the amount of each separate salary, every year, is admitted; but they contend that the King cannot apply the monies granted to him by the 14th Geo. III. and by the Provincial Act of 1795, to the purposes for which they are appropriated by those Acts, without the specific vote of the Assembly.

The proceeds of the duties imposed by these Acts, do not by any means amount to a sufficient sum to defray the annual expences of the Government, but as far as they will go, they are applied, by order of His Majesty, to whom they were granted, to the payment of the salaries of the Governor, and the other more essential and higher officers of the Government, who are thus rescued from that state of dependence to which the House of Assembly wished to reduce them. I believe I may assert that no larger salaries are paid out of them than these officers enjoyed, before the dispute commenced—an account both of the proceeds of the duties, and the specific sums

paid to each officer is annually transmitted to the House, with a request from the Crown, to defray the other unavoidable expences which the Government is obliged to incur for the public good. This grant is not only withheld, and public servants and public institutions, which are admitted to be necessary, deprived of the remuneration and support to which they are entitled—but the application of the before mentioned duties, to the purposes to which they are *by law* appropriated, is declared to be a breach of the privileges of the House of Assembly.

The Government are perfectly willing to surrender the Revenue which the Crown still possesses in Canada, to the disposal of the Assembly, as the King has surrendered the Revenues which he formerly possessed in Great Britain, provided the Assembly will do as the Parliament has done, substitute some other means of supporting the Government of the Country, in a constitutional manner; but it is not willing to surrender all the authority of the Country, Executive, Legislative and Judicial, into the hands of the House of Assembly.

The public cannot be too often reminded, that the House of Assembly did not originally complain of the amount of the Civil List; they did not say to Sir John Sherbrooke, the estimate which you have submitted to us is beyond our means, or the salary of yourself, or of this or of that officer of the Government, is greater than his situation requires, or his services deserve. In the first session they voted, I believe, a sufficient sum to cover *all* the expences, and in the second they merely omitted some few items in the estimate. It is not therefore, I repeat it to diminish the public expences, but to increase their own power that they are contending. It is true that they have recently talked of cutting down the salary of the Governor in Chief, of the Chief Justice, and of others who have opposed their plans, and it is because this little permanent revenue thwarts their schemes, and, as yet, preserves the independence of the King's Repre-

sentative, and the President of the Council, that they are so anxious to obtain the controul of it, and so outrageous because that controul is withheld from them.

I have thus endeavoured to lay before my fellow subjects in Nova-Scotia, a plain, and I trust a fair statement of the differences which exist between the Government, and the House of Assembly in Canada; and I think it must be evident to every unprejudiced mind, that the claims of the House, if granted, would be destructive of our mixed Constitution, and render the first and second branches of the Legislature, subservient to the views of the third.

In these days, influence and power are almost synonymous terms; let it not therefore be supposed that the evils which it is apprehended would flow from such an order of things are visionary, and would never produce any ill effects in reality—to suppose this is to admit, that the powers which we have hitherto preserved in our Constitution are unnecessary, and that all authority may as well be vested in one branch of the Legislature, as divided among the three; a principle, which, even our republican neighbours do not admit—for when they had severed themselves from the parent state, and had no longer an hereditary Monarch and Legislative Council, who derived their authority from the King, to balance the democratic power of the country; they still endeavoured to assimilate their form of Government, as nearly as their new situation would admit of, to their former institutions.—Both in the general and state Governments, they divided the legislative power among three distinct bodies politic, and although the political sentiments of the people would not allow them to infuse into their constitution, the *essence* of ours, they preserved its form, and as far as was practicable, its spirit also.

Let not then the House of Assembly of Canada be supported by public opinion, in their attempt to engross the whole of that power to themselves, in which the Con-

stitution has ordained, that others should participate. I would be no advocate for infringing their privileges, without the enjoyment of which the liberty of the subject could not be secure, and notwithstanding their offer to pay their Civil List, must have been understood as an offer to pay it, *as it then existed*, if it is found to be outrageously extravagant, let them point out the extravagance to the Government, and insist upon its correction. A fair and manly communication with the Executive would soon correct the evil, if any exist, let them say, "lay before us a reasonable estimate for the public expenses, such as the country requires and the people can pay, and surrender to us the Revenue which the King possesses in the Country, and we will then make a permanent provision for those expenses. We do not wish to keep the whole Government in a state of constant dependence upon us. We are aware that the Labourer, whether he labours for the public or for private individuals, is worthy of his hire. We will concur with the other branches of the Legislature in fixing by a permanent Law what that reward shall be, and not leave those who have important public duties to discharge, to depend upon popular caprice for their support." Let them say this, and if the Government do not accept their offer, and surrender this revenue to them upon such terms, it will no longer find an advocate in

A NOVA-SCOTIAN.

P. S. I would mention to those who think the point not worth disputing about, the two following circumstances:

Sir George Prevost's conduct as Governor-General was disapproved of by the Council, and warmly applauded by the House of Assembly. The latter voted him £2000 to purchase plate, the former rejected the vote; had his salary been subject to an annual vote it would probably have shared the same fate—should that be the case?

In Nova-Scotia, when part of the salary of the Judge (£100) depended upon an annual vote, a Member of the House of Assembly, whose name appeared very frequently upon the Docket, reminded one of the Judges, with whose public conduct he was displeased, *that the annual vote had not yet passed*; the observation was received with indignation and treated with contempt—but should such offices be subject to such insults?

The preamble of one of our old Statutes observes, “that it conduceth much to the due administration of Justice, that those who exercise places of trust “ should have *competent and certain reward*”—has this position of our ancestors been confirmed or disapproved by the experience of their posterity?

LETTERS

OF

SCÆVOLA,

FIRST PUBLISHED AT HALIFAX,

IN

THE NOVA-SCOTIAN;

OR,

COLONIAL HERALD,

in the year

1827.

LETTERS

SC. EVOL.

THE NOVA-SCOTIA

COLONIAL HERALD

1837

ADVERTISEMENT.

THE Letters of SCÆVOLA, ON THE PRESENT STATE OF THE BRITISH COLONIES, originally appeared, in 1827, in THE NOVA-SCOTIAN, OR COLONIAL HERALD, an ably conducted paper, published in Halifax. They present the clear and impartial view, taken by a disinterested Looker-on of the rise and progress of, what are usually termed, *the financial difficulties of Lower-Canada*, and are now printed in the form of a pamphlet, for the information of those who may take an interest in the concerns of this valuable Colony. The first letter of the series is omitted as not bearing particularly on Canadian affairs, and being therefore unnecessary to the right understanding of the subject.

Quebec, May, 1828.

[FROM THE NOVA-SCOTIAN.]

LETTER II.

On the present state of the British Colonies.

SIR,—Though the design I proposed to myself in addressing a series of Letters for publication in your paper was of a general nature, being professedly to set forth in some partial details the eminent advantage derived by these Colonies from their connection with Great-Britain; yet it will not, I trust, be thought a wide departure from that plan, previously to direct the attention of your readers to a subject, much more narrow and limited in its range, but having a close affinity to the main question;—I allude to the unfortunate contests which have lately disturbed the Government of Lower-Canada. It is essentially necessary that the grounds of these be well understood in this Province, for they involve principles that militate against constitutional liberty, and may be, unless timely checked, the fruitful sources of prodigious and permanent mischief. It is high time for the friends of order to be alarmed, when the Speaker of the Lower House of Assembly considers himself justified to put forward a Manifesto in the face of the world, flinging back the charges preferred against him and his party by the King's Representative, and appealing to his constituents against the conduct of the administration. Neither has it any tendency to quiet these fears, when we observe, that certain members, whose names were not annexed to the Manifesto on its first appearance, have since added their signatures, and publicly declared their adherence to its language and pretensions. These are infalible symptoms that if the spirit of disaffection has not spread among the people, it has taken dangerous root among those to whom they have confided their affairs. The Canadians, on all hands, are represented as a peaceable, loyal and unoffend-

ing race, little subject to political animosity and not prone to change; and it would be a matter deeply to be deplored, if those people, so simple in their manners, so attached to the soil which has given them birth, should be seduced by the intrigues and ambition of a few popular leaders, to swerve from their allegiance or to light the flames of civil discord. Such an evil, it is to be hoped, is still far distant, but it ought to be recollected that intestine broils propagate by their own violence and gather strength as they proceed. Like the dark cloud discovered by the prophet's eye as rising from the sea, small and no bigger than a man's hand, but soon augmenting in size and blackening the whole heavens, they increase in magnitude and dreadful interest, till they exasperate every passion, and bring about consequences which could not possibly have been foreseen. The French in Canada may read to themselves an instructive lesson from the chapter of political incidents in Europe.—Let them look upon the scenes which have been passing in the land of their forefathers, and let them ponder on their import and bearing. I can have little expectation, Sir, of securing a favourable audience to any admonitions I may give in an anonymous character, and from this little inconsiderable Province, apart from the theatre of strife, and not fully conversant with all these springs that are at work; yet this very distance precludes me from being hurried along by intemperate impetuosity, and puts it in my power to form a more deliberate judgment on the subject-matter of the dispute, and on the actions of the parties, than can be passed by those who are standing on the brink of that furious whirlpool which is boiling and foaming at their feet with the elements of popular contention. Men engaged in a fray and transported with the heat of opposition, are little capable of deciding on the merits of the quarrel, or on the character of their adversaries. The angry feelings are all in arms, and distract the councils of their calmer reason. The bystander, who has marked the commencement and witnessed the progress, is best qualified to judge of the probable

issue of the rencounter. Such is the vantage ground I occupy on this side of the Gulf of St. Lawrence. Should I be betrayed, from want of access to the best sources of information, into any errors in point of fact, I shall at least steer clear of all those which are engendered in the hot-bed of faction. My canvas cannot be overlaid with the colours of party spirit, and the figures, introduced and sketched from the life will thus have a better chance of coming near to a faithful resemblance.

I am fully sensible that the partizans of Mr. Papineau, and the newspapers in his interest, disclaim any designs against the Government, and both ridicule and set at nought all apprehensions entertained of any actual disturbance or civil commotion. They affect to be merely urging their claims in a constitutional manner; and to be asking that redress from the King which is refused them by his Representative. Perfectly willing they pretend to be, in as far as a just regard to the rights of their constituents will allow, to make ample provision for the exigences of the civil administration of the Government; *only* that provision must be *annual*, liable to perpetual discussion in the Lower-House, and to be encreased, diminished or discontinued, according to the ebbing and flowing of popular feeling at the moment—His Majesty, the recognised head of the Government, is not to have a single shilling at his own disposal; he may send out a Commander-in-Chief; he may appoint Judges, an Attorney and Solicitor-General, but he must have no power to bestow on them a suitable establishment. Their salaries are not to come from the Royal purse, nor be thought to proceed from the munificence of the Sovereign, but to be doled out of the hard earnings of the people, and obtained by the ascendancy and eloquence of a few legal orators. Such are the assumptions of this band of Patriots, who are leagued in Canada to defend the legitimate rights and privileges of the people, and who have fronted and bearded the existing Administration as the champions of Colonial liberty. They are desirous of no political

change, approach the throne in the language of respectful submission, and talk of loyalty and attachment, while they meditate a deep plot of stripping his Majesty of all substantial power. While such pretensions are advanced so utterly at variance with the practical effect of British Freedom, and so obviously calculated to sap the foundation and tarnish the splendour of the throne, away with all the cant and hypocrisy of homage. I look to acts not to words—to the tendency of measures and not to the motives from which their authors would wish me to believe they proceed. The men who can advocate these opinions, so fraught with revolution, are guiding the vessel of the State among shoals and quick-sands, and will never attain the honours of skilful pilotage. Say what they please, the passengers are in danger, and shipwreck is inevitable. The course they are steering is so full of peril, that I cannot conceive by what process of reasoning they have deceived themselves into a belief of security, although I can readily comprehend the advantage it may give them in the progress of the contest to lull the suspicion of Government. Let them beware of the fatal effects which may ensue from a continuance in this blind and headlong obstinacy. The men who revolutionized France, became the victims of that vulgar and unmanageable fury which they first let loose. The throne which they overturned and deluged with the blood of their Sovereign fell on their own head and crushed them to pieces. The liberty which they pretended to be in quest of eluded their research, and in its place they alighted on a military despotism which long scourged their country and Europe by the most frightful inflictions, and terminated happily for mankind, in the re-establishment of that more peaceful order of things which had been destroyed. All interference with constituted authority is a hazardous game, which can only be justified on the plea of the most imperious necessity. Partial evils must be borne, not violently resisted. The physical force of the people is the last resort; to which the politician should never apply

on behalf of the trappings and appendages of liberty, when her real essence and being are not endangered.

But the Canadian patriots will tell me that all this is idle declamation, and that a constitutional inquiry has not been yet carried into the grounds of their complaints—that they are only contending for the just rights of the people, who, either by themselves or their representatives, have solely the power of granting and appropriating all taxes and imposts—that the English people exercise this uncontrolled power over the Revenue, and that the Colonists, being co-heirs of the same constitution, may legitimately claim a like privilege and authority. By this standard, they say, the question ought to be tried; and they are ready to abide by the decision. Be it so; I accept the terms, and shall at once proceed to investigate the matter in debate by the maxims and practice of the British Constitution.

Every Lawyer knows that the mixed form of Government, consisting of King, Lords, and Commons, originated in what is denominated the Feudal System. This latter was introduced into Europe by those rude and northern invaders, who, in the fourth and fifth centuries, poured in immense masses into the finer Provinces of the Roman Empire, and laid the foundation of those Kingdoms, which have since been established there. They left their own habitations and inhospitable climes in the form of an army, bent on conquest, and more or less organized under military leaders. The Chief Commander, on taking possession of a country, assumed the reins of Government in virtue of his superior rank, and he divided and dealt out his authority, as well as the lands that he conquered, among the officers, that had followed his fortunes. The share belonging to each was proportioned to his influence and authority; and the various titles and orders of nobility had their rise in the degrees of military command originally possessed by their warlike owners. The system, which grew out of this extraordinary state

of things, invested the Commander in Chief with all the attributes of Supreme power, so that he was at once the fountain of honor, and the greatest proprietor in the kingdom. Among his officers, he distributed counties, districts, baronies, and manors; and vested them with the corresponding titles of Dukes, Thanes, Earls, and Barons. Upon the soldiers who filled up the ranks he conferred, less or more minute parcels of land, and bound them under strict military tenures. The whole distribution of property in the European Kingdoms may be traced back to the arrangements made under this singular and extraordinary state of Society, and without studying the history of that period it is still impossible to comprehend thoroughly the spirit and forms of the British Government. Accordingly when we look for the first elements of that Constitution under which we live, we find it scattered and dispersed amid the chaos of feudal ideas. The King strikes our eye as the principal figure, standing at the head of the Nobility, and possessing an ample *hereditary* revenue, not dependent on the grants of the other two orders in the State, but vested in his own person and descending to his heir with the Crown. This revenue was called the *ordinary and hereditary patrimony* of the Sovereign, disposable at his will, and constituting the fund essential for the maintenance of his state and dignity. It was the original share of the spoils set apart for him, in virtue of his superior authority; and he held it by the same right on which the Nobles claimed their estates, and the freemen their allotments of land. The sources of this ordinary revenue, it would be tedious to enumerate; and I shall only mention, that the Royal demesnes and forests, quit-rents, the Customs, escheats, wardships, the rights of purveyance and preemption, fines and forfeitures, marriages—were all among the number. By the possession of these and several others, the King was enabled to defray the charges of his ordinary civil establishment, and to pay the salaries of the officers of his household, and of his Courts of Justice. The Lords and Commons assembled in Parliament during the first ages of

English history, no more dreamt of interfering with the hereditary revenue of the Crown, than with the private expenditure of any individual, noble or plebeian in the nation.

But beside this ordinary, there was what has been called the extraordinary revenue of the Sovereign, and which was granted in form of aids, subsidies and fifteenths. These were taxes imposed to meet great emergencies, such as the waging of war, or repelling invasion, and were granted for special purposes, and under express limitations. They were the gift of the Nobles and Commons, out of their private property, and therefore they claimed the right of fixing their amount and of appropriating them to their ends. These aids could not be obtained without calling together the three Estates, and hence the reason that our ancient kings were compelled, often against their will, to have recourse to their Parliament for supplies, on any uncommon juncture of affairs. In ordinary times, and under ordinary circumstances, the Government could be conducted out of the *hereditary* revenue of the Crown, and these troublesome Assemblies be dispensed with by the reigning Prince, frequently for a series of years.

This distinction which we have endeavoured to establish betwixt the *ordinary* and *extraordinary* revenue is of vast importance towards the right understanding of the British Constitution, and will unravel many intricacies that occur in the reign of the Plantagenets and Tudors. Neither will it be without its use when applied to the existing differences betwixt the Lower House and the Executive in Canada.

I have further to state that this ordinary revenue of the Crown, derivable chiefly from the usages of the Feudal System, was experienced to press with peculiar severity, in many instances, on the subject, and after more liberal notions of civil freedom obtained, successive attempts were made to substitute a definitive sum for these preca-

rious exactions. In this way the ancient patrimony of our Kings came to be commuted for specific sums of money taken out of the general taxes; and the *Civil List* occupied the place of the ordinary Revenue. In confirmation of this, I need only refer to the abolition of purveyance at the Restoration, when Charles II. consented to resign entirely that branch of his Revenue, and to accept, in recompense, the hereditary excise 15d. per barrel on all beer and ale sold in the kingdom, and that this excise was at a later period, 30th Geo. II, cap. 19, made up to the Crown by an annual sum of upwards of £7000 exigible from duties imposed on Wine licences. It would be a loss of time to pursue this matter farther, and it is sufficient to state that the invariable practice has been of late to place at the disposal of his Majesty, at the commencement of his reign, and during the term of his natural life, a sum adequate to meet the expences of his household, to pay the Salaries of his official servants, to uphold his rank and establishment in a style of magnificence that might cope with that of the proudest and richest Nobles of the land. True; this sum now is the Grant of Parliament, but it is the liquidation of a debt due to the Crown for the remuneration of that ample Revenue, that flowed from sources reaching back to feudal times, and then held by an independent and inherent right. Hence, the reason that the Civil List, at present in Britain upwards of a Million Sterling, is not voted annually; hence, the reason that its expenditure is not scrutinized and examined and sifted with the same prying spirit of economy; and hence, too, the cause that out of this fund placed at the command of His Majesty are still payable, the Salaries of public officers that of old depended on the ordinary Revenue of the Crown. There is no clearer doctrine known to the Constitution, than that the Monarch be regarded not only as the first Magistrate, but as the FIRST GENTLEMAN in the Kingdom; and that his rank and dignity be maintained with appropriate lustre and grandeur. Strip him of the means essential to his

lofty station, or make those means dependent on the caprice of annual votes, and you virtually dissolve the Government. It would be no longer the frame work, venerable by its antiquity and endeared to Englishmen, whether at home or abroad, as the best practical system of civil and political liberty ever yet devised by the wisdom of men, but a new structure of modern art, and bearing a close resemblance to republicanism or democracy.

SCÆVOLA.

[FROM THE NOVA-SCOTIAN.]

LETTER III.

On the present state of the British Colonies.

SIR,

In my last I entered on the merits of the controversy now agitated betwixt the Executive Government in Lower-Canada, and the House of Assembly: and I resorted for my arguments to the Feudal System, which in its legitimate operation and natural tendencies, considered distinct from all prospective wisdom in our forefathers, suggested the image of the British Constitution; and cast the first mould of that singular and admirable balance of civil liberty, which has since worked so truly, and dealt out so large a share of happiness to the nation. I showed, that in this system the King had assigned him a station and pre-eminence above the Aristocracy; and enjoyed in his own right a territorial and hereditary Revenue, out of which he defrayed the charges of his household and of his Courts of Justice, and which never was, nor could, according to feudal ideas, be limited, con-

trolled, or appropriated by the other two branches. This revenue was just as much the property of the Crown, and placed as entirely at its disposal, without check or restriction, as were the lands of the Nobles or of the lesser allodial proprietors. And this independent distribution of the fruits of their victory, among those who had won it by their swords, was in perfect accordance with the notions of Justice, in that age, and might, without reference to history, be taken for granted as the necessary and inevitable result. The new country, which the military adventurers had overrun with their arms, was seized by violence, and partitioned among them as freemen, all vested with personal and unalienable rights, yet each having his own peculiar share of power, influence and authority. In this division of a conquered territory, is it to be supposed for a moment, that the Commander of the hostile band would be the only individual, who was to forgo his own claims, and trust for the maintenance of his rank and station to the free and voluntary contributions of his officers and men. Was he to have no funds, but what were derived from their benevolence? Were they to grasp at all, and then return him out of their mere good will and pleasure, the meagre pittance or liberal supply, as selfishness or generosity chanced to predominate? The whole strain of European history, falsifies these suppositions, for no sooner is the pall lifted in the dark ages from the last remains of the Roman Power; than we discover the Crown both in France, Spain and England, in possession of an income, fit for the ordinary ends of Government, and which was not derivable from nor dependent on the grants of the Tiers Etats, the Cortes, or the Parliament. That such was the state of the fact in the last country is confirmed by all our historical monuments, and by what may be accounted of no less incontrovertible authority, the structure of common law. It was from this independent revenue, that the Monarch was enabled to meet his ordinary disbursements, and to pay the Salaries of the Treasurer, the

keeper of the Privy Seal, the Judges of both Benches, the Barons of the Exchequer, and before the establishment of fees, of the Collectors and Comptrollers of his Customs. It is curious, too, to observe, and not foreign from our purpose, that the first struggles for liberty were not occasioned by any differences betwixt the King and the people, about the ancient and undoubted dues of the Crown, but about arbitrary attempts to stretch the prerogative in the levying of aids and subsidies, without the consent of Parliament. It was the imposition of ship-money, that called forth the heroic resistance of Hampden, and has handed him down to us with all the honors of a patriot.

I have been the more anxious to place this great doctrine of the British Constitution in a variety of lights ; because a very common error has prevailed, that the Civil List, which has come in lieu of the hereditary patrimony of the Crown, is the free gift of the Commons, and may be directed and appropriated like other grants. On this question, it ought not to be forgotten, that the different branches of the Royal hereditary revenue have either been abolished sometimes by direct and sometimes by implied compact, or merged into the public funds of the country, and that therefore an equitable claim lies with the Executive for a full equivalent, at least to the extent of what has been lost or resigned. I say nothing at present of the expediency of upholding the dignity of the throne, I am confining my observation to the justice of it.

I shall now advert to another principle of the Constitution, which requires to be cleared up, and accurately comprehended, for the solving of those political differences of which we are now treating ; and that is the powers of the three constituent Branches in the rising, granting and appropriation of Supplies.

The raising of Supplies can be effected obviously by no other means than the imposition of taxes, the amount and collection of which are specified and defined in what are called Bills of Revenue. These taxes, the most of them, are of general pressure, and fall, indiscriminately, upon all orders; and of course from time immemorial, the consent of the Lords, spiritual and temporal, and of the Commons in their respective houses, has been regarded as indispensable to their imposition. And it is but fair and reasonable that it should be so. The Aristocracy, from the very large share of property in their hands and the consequent extent of their consumption of all dutiable articles, must contribute no inconsiderable quota of the aggregate amount; and before the accumulation and wide diffusion of commercial and manufacturing capital among the middle classes, that quota must have been the larger porportion of the whole. During the reigns of the three Edwards, and before our Constitution had become consolidated into a perfect system, and the bounds of the two Houses had been settled and accurately defined; it is on record, that the grants of the tenths or fifteenths were made by distinct acts of the Clergy for themselves, of the Temporal Lords for their order, and of the citizens and burgesses, for their constituents. At this period the will of each was separately expressed—a decisive proof, that taxes which affected property universally, could only be levied by common consent. This then is the cause why the House of Commons, though the representatives of the people, are not permitted by the usages of the Constitution, to lay any burden whatever, by their sole authority. A Money Bill, although it must originate with them, in consistency with parliamentary forms, and for which there are many considerations of expediency, may be rejected by the Lords; and may also, should any of its provisions touch the Prerogative or seem to press unequally on his people, be disallowed by His Majesty.

2nd. A supply may be granted for one or any number of years, or in perpetuity, for a special or for a general purpose ; and in every diversity of its application, whether as to time or object, the concurrence of the three Branches is essential. Should the Grant, by the clauses of the Bill, be placed at the disposal of Commissioners, or vested in trustees or be left to the management of any recognized Board of the Government, as that of the Lords of the Treasury, or of the Admiralty, it is abundantly manifest that it could not be resumed by the Commons, and appropriated to any other object by the exercise of their own authority. Neither have they the power of controlling the items of its expenditure, or imposing on them any new limitations. All they could do in case of mismanagement, would be to prefer their complaint, and introduce a new Bill with the view of wresting the money out of the unskilful or iniquitous hands that held it ; but that new Bill must run its customary course, be passed by the Lords, and assented to by the King. Should it be stopped in any of these stages of its progress, the House of Commons could obtain no relief, and must resignedly submit to the evil, which they had tried in vain to remedy.

3nd. It is the undoubted privilege of the Commons, in voting any supplies whatever, to be as minute and specific in their appropriation, as may be consistent with their own dignity, and the wants of the public service, may subdivide any sum into parts, and direct the manner in which these parts are to be applied. And indeed as the right of organization is lodged with them, according to the admitted forms of the constitution, this power of special approbation gives them an infinite controul over all branches of the public expenditure. This power however, important as it is in its consequences must be put forth in the first instance ; for if the Bill which has granted the sums, be once passed, and has received the royal assent, the Commons cannot of their own authority,

correct any mistakes which they may have committed, or what is less, supply any obvious omissions. Their first bill which has gone into effect, must continue operative, till it is amended or repealed by the same treble assent that gave it a legal existence.

All these remarks which I have been called upon to make in the course of my inquiry, are little more than political truisms, so simple, so easy, that they carry along with them their own evidence. Admit once, that a Law is established by the united voice of the three Branches of the Legislature, and it follows as a necessary corollary, that none of them, individually, can amend or abrogate it. A perpetual or temporary appropriation out of the general revenue for a particular purpose, settled by a public act, must remain as the law of the land, unaltered and unalterable, till the three Branches concur in its repeal, or until it expire of itself. No inconsistency or levity of purpose in the popular Assembly can defeat its provisions ; neither can the vast and seemingly unbounded influence of the Crown, nor the formidable weight of the aristocracy effect a like object. These different powers are admirably balanced by our constitution, and form correctives and checks to the tendencies of each. The establishment of these poises and counterpoises, is at once the chief ornament, and the best security of our political freedom ; and will always be religiously and inviolably preserved by those Statesmen, who have studied the Science of government, and come to the conclusion, that the noblest fabric of national glory, that the world has hitherto witnessed, rests on this foundation.

I have one other topic to discuss and explain a little before I proceed to apply these positions to the disputes in Canada ; and this last may be summarily expressed in these words, " that the frame work of the British Constitution, modified by a requisite, nay, a necessary policy,

is transplanted into the North American Province,"—with the exception of Newfoundland, which has not yet received any local General Assembly. The form of all those is nearly the same. The freeholders of whatever denomination of religion, enjoy the elective franchise, and send their representatives to impose taxes and manage their public concerns. A Legislative Council is constituted with the powers and after the model of the House of Lords, and is drawn chiefly from the higher officers of the Crown.—His Majesty is at the head of the Colonial Government, and exercises his regal negative on all the Bills and Acts of the General Assemblies, as he does on those of the Imperial Parliament ; although on account of the distance, he, by a commission, appoints a Governor who acts under special instructions and whose assent to a bill gives it merely a temporary effect, as it is not final till the Royal will is expressed and signified. The Governments of all these Colonies are strictly British, and cannot be said to be copies and imitations of the great original so much as scions proceeding from the same stem. The Monarchical power claims and exercises the like prerogatives in these American Possessions, as in the Parent state ; it presides over their forms of Justice, and receives all their supplies, to be afterwards distributed, by its own recognized executive authority, according to the exigencies of the Public Service. The King is the sole supreme head throughout the whole Empire ; but acts in England through the Lords and Commons, and in his foreign dependencies by their own legislative Councils and Assemblies.

Between the Colonial and Maternal Legislatures, however, certain distinctions subsist, that must not be overlooked in forming our estimate of the rights and privileges belonging to each ; and without marking these, we cannot entertain very correct opinions, nor be in a condition to decide, on constitutional grounds, any contro-

versy, that may arise from conflicting claims and interests. On these distinctions, I must beg leave to speak a word or two by way of explanation.

1. The Colonial Legislatures have practically and in fact a merely local jurisdiction. They have the right to levy taxes and appropriate them towards their internal improvement. They can enact laws for the regulation of their own private affairs, and for calling into action the capabilities and resources which may be at their command; but they cannot interfere with their neighbours, nor by any of those ingenious contrivances of Legislation to which independent States have recourse, can they put down a rival, seize a commercial advantage, or alter in any shape their foreign relations. A Provincial Act of Canada has no force in New Brunswick; neither could it shut out nor admit to entry the goods, wares and merchandize of any foreign nation, to which his Majesty had granted, or from which he had withheld the liberty of trading with his Colonies.

2. The Imperial Parliament has an authority co-extensive with the Empire, and is essentially paramount and supreme, in order the more effectually to discharge its high functions, and to bind the different parts into a close political union. This jurisdiction, mighty and vast as it is, ought not to be contemplated with jealousy, being indispensable to the preservation and safety of the whole. It may at times restrain, limit and controul, so as to occasion a partial evil; but like the universal law of gravity in the Solar System, it keeps the subordinate bodies in their proper spheres, regulates their motions, and prevents them from diverging beyond the grateful and fructifying influences of light and heat. Without this connecting and presiding dominion in the Imperial Government, no unity of plan, no tendency to a common interest could possibly be perceived or felt in her widely separated and scattered possessions, lying more or

less in every quarter of the Globe and in every Ocean by which the terrestrial surface is chequered. This paramount authority is such, that all laws issuing from it, are of universal operation, and of their own right annul and sweep away every colonial regulation or usage, that is in opposition to them, and that crosses, contradicts, or traverses their provisions. This assumption of unlimited legislative control might be regarded as frightful and dangerous, had it not imposed fetters on itself to quiet the fears and apprehensions entertained of its abuse. Guarding as Britain does every section of a vast Empire by expensive Military and Naval Establishments, she claimed the right, about the middle of the last century, of raising and levying taxes on her foreign possessions, which were to flow into the Imperial Treasury and be available to the purposes of the General Government ; but as this exercise of legislative power might have been carried to an unwarrantable length, and have drained the Colonies of the little wealth derivable from their own industry and which would be much more beneficially applied to the development of their native resources ; it awoke a spirit of resistance, and created the troubles of the American Revolution. All this is matter of history on which I shall not dwell, but shall content myself by simply pointing out the decided improvement in the colonial policy that grew out of this opposition. The Mother Country, at an early stage of the American disturbances and when she was in the full view of quelling them successfully, at any rate long before the issue of the struggles could be foreseen by her, made a generous and voluntary surrender of two distinct rights, which she had previously maintained, and on which she had up to this period invariably insisted. The less important of these was, a renunciation of all future interference with the internal taxation of her Colonies, thus leaving them at liberty to manage and adjust their affairs by their own Assemblies : and the other, but infinitely superior in its character and consequences was a declara-

tory disavowal by Parliament, of applying any taxes, imposed by its authority for the further regulation of *Foreign Commerce*, to aid the public funds of the Mother Country; and also a distinct pledge that the net produce of such taxes levied in the North American Possessions should be paid into the hands of the respective Receivers General or Treasurers, and placed at the disposal of the Local Legislatures. By this famous Act 18th Geo. III. cap. 12, and which has been justly and triumphantly styled the Charter of our Colonial Liberty, the causes of any suspicion or dread of Imperial authority were happily removed, and a basis laid for strengthening the relations of amity, friendly feeling and reciprocal intercourse. In this statute, which has been liable to much misinterpretation, the Parliament asserts its own supremacy and claims the exclusive right to regulate the foreign trade of her Colonies, by taxes or prohibitions; and its effect too was to be prospective,—not to repeal any duties then payable to the Crown in the Colonies except the duty on Tea which had been the immediate occasion, and main spring of the rebellion at that time raging in this Continent.

With this brief exposition of some leading principles of the British Constitution and of the nature of those privileges which have been guaranteed to us as Colonists, I trust every one will be now prepared to accompany me into the consideration of the disputes in Lower Canada and to guide himself by the lights that have been set up in this perplexing field of enquiry. If the positions I have asserted or the definitions I have given of Constitutional principles be incorrect, I call on the Canadian Patriots to expose their fallacy; for the merits of the question at issue between those and the Executive must be tried by the tests which I have attempted to establish. If I have not practised on my own judgment some gross and wonderful delusion, there cannot be a doubt, that the popular party are aiming at an impracticable object,

and which cannot be attained without subverting that Government, and prostituting that liberty, of which they profess to be the admirers and advocates.

SCÆVOLA.

[FROM THE NOVA-SCOTIAN.]

LETTER IV.

On the present state of the British Colonies.

SIR,

Before applying the principles and usages of the British Constitution, illustrated in my last letter, to the differences now pending betwixt the Representatives of the people and the Executive government of Lower-Canada, it may not be improper, by way of introduction, to give a brief abstract of the political and civil history of that Colony. Without this knowledge, it will be absolutely impossible to form a correct estimate of the contrary views and conflicting reasonings, by which either party attempt to defend the ground which they have chosen. The different writers who address the public through the medium of the papers edited in Quebec and Montreal, are at this stage of the controversy, so imbued with the spirit of party; that they deal much more in the language of vituperation, than in exhibiting lucidly and in order, the merits of the question.

In 1759 Quebec surrendered to the arms of his Britanic Majesty, and Montreal submitted to the same fate in the year following—the period in which George III. ascended the Throne of England. In the capitulation of the

Marquis de Vaudreuil, he expressly stipulated for a safe conveyance to France, of all such as might be disinclined to transfer their allegiance to a new Master, and to live under the British Government. This privilege, asked in the 36th article, was unconditionally granted to the French, Canadians, merchants and other persons who chose to retire to France, either at that time, or at the definitive treaty of peace. The acceptance, therefore, of the new order of things arising out of the events of that war, was to every subject of his most Christian Majesty, an act of his free will and pleasure; and if dissatisfied, he had the liberty of selling his effects, and withdrawing from the country.

In 1763, when Canada was finally ceded and guaranteed to the British Crown, His most Christian Majesty conveyed and made over, "the Sovereignty, property, possession, and all rights acquired by treaty or otherwise, which he had, till then, over the said countries, islands, places, coasts, and *their inhabitants*, and that in the most ample manner and form, without restriction, or liberty to disturb Great Britain in the possession thereof." In this way His Majesty by right of conquest first, and of treaty afterwards, succeeded to the duties and taxes which were levied in Canada, by French authority; and he continued to collect these and to appropriate them, to the support of the new Government, for the space of 11 years, before they were discontinued by act of Parliament.

But in 1774, all these French taxes were repealed, and in place of them rates were imposed on brandy, rum, spirits and molasses, by 14th Geo. III. cap. 88; for the avowed object, as the title of the imperial act sets forth, "to establish a fund for defraying the charges of the administration of Justice, and support of the Civil Government." This fund so raised was to be applied by the Lord High Treasurer or any three or more of the Com-

missioners of His Majesty's Treasury, by warrants under their hands, towards the payment of the said expenses ; and the residue, if any, was placed at the future disposal of Parliament.—The King, by this act, was legally vested with the power of appropriating these duties to the purposes of his colonial government, and his right of conquest was swallowed up, and absorbed in this legitimate gift of the two branches. It must also be brought into notice, that at this period 1774, it was deemed inexpedient to grant a representative Assembly to Canada ; and its affairs were managed by a Governor and Council. No local Legislature, therefore, existed to raise the necessary supplies for the maintenance of the Civil Administration, and under these circumstances the British Lords and Commons were the only constitutional authority.

It ought further to be observed, that this statute, which creates a revenue to the Crown, by internal taxation in an American Colony, was passed four years prior to the celebrated 18th Geo. III. cap. 12, which we already designated as the Magna Charta of our Provincial Liberties, and which renounced in future the exercise of such a right on the part of the British Government. But as the produce of these duties never was, at any time remitted to England to swell the receipts of the Exchequer, but has been wholly expended in the payment of official Salaries in Canada ; there is not a plea left for murmuring against the measure, and indeed so inadequate is the provision of this Imperial Statute for the necessary exigencies of the Civil Administration, that the Provincial Legislature, when it was constituted and called into existence 18 years afterwards, gave His Majesty the further sum of £5000 Sterling for meeting these indispensable charges. The first Legislative Council and Assembly of Lower Canada, met in Dec. 1792, and in their third session gave a perpetual grant of the above sum, to be paid annually “ towards *farther* (mark the word) defray-

ing the expenses of the Administration of Justice, and of the support of the Civil Government," 35th Geo. III. cap. 9, section 17.

After this hasty sketch of their political history, let us now stop and reason a little on constitutional grounds. The facts which I have stated, are all correct and drawn from the most authentic sources ; and I have taken these pains, to check the mischievous spirit of disaffection, which breathes in the columns of some Canadian papers that have lately fallen into my hands. So satisfied am I of the incalculable benefits we derive in these Colonies from our connection with Britain, and of the paternal care with which she has watched over our interest ; that it is our duty to feel gratitude rather than to express disloyalty, or to unloose any of the ties by which we are bound to her. If I have falsified any of my statements or coloured my quotations, I stand amenable at the bar of the Public.

The King then, by the session of Canada, came in the place of its original sovereign, and succeeded to the rights and privileges of the latter. The duties collected from the people by the Old Government were continued by the new, and applied to the necessary expenses of the administration of the Province. A British act commuted these French taxes for others, substituted in their room eleven years after the conquest ; and empowered the Lords of the Treasury to pay out of them the charges of the Civil Government. This application is virtually acceded to by the Provincial Parliament of Lower-Canada in the further grant of £5000 sterling, which they made for the same purpose in 1795. Now, I ask, is there any power in the House of Assembly at Quebec to intermeddle with these two appropriations ! In the first place the King received the former grant from his British Parliament and the latter grant he received from his Provincial, so that in holding both he is exercising no indefensible and high act of prerogative, as they are the gifts of

his subjects. Besides, he has given his Royal assent to both bills, that of 1774 as well as that of 1795; and these must continue Law, till they are abrogated by the self same authority. Is there a statesman who can offer the shadow of a single constitutional argument in behalf of the House of Assembly or of its Speaker, Mr. Papineau? Every attempt to seize those revenues vested in and conferred on the Crown by Public Acts is levelling a blow at the Constitution, and if carried home must plant there a deadly wound. The Government is subverted, if the Lower House shall gain the victory in the quarrel.

But setting aside all the force which this view of the matter borrows from the existence of Statutes, and contemplating it in the light of mere political expediency; I shall beg leave to propound a simple question, to be answered by the wholesome doctrines of genuine British freedom. Could His Majesty stand at the head of the Government in Canada, and exercise there the functions of his regal prerogative, if he possessed no independent fund, from whence to pay the Salaries of his official servants? As the world is now constituted, money is the only true source of substantial power; and a King without the means of providing for those around his government, would be little more than an airy vision of royalty. Why is the civil list voted to His Majesty during the term of his natural life, and that too by a people jealous of their liberties, enlightened in the mechanism of Government, and profoundly versed in all its details? It is to make him independent, and to provide a fund not liable to the fluctuation and caprice of a popular Assembly. It is vain to argue further, for a King known and recognised by the British Constitution must have a revenue in every colony where his sovereignty is exercised, and he must derive it either from that colony itself or from his native dominions. The civil establishment must be set on a permanent and stable footing, which can only be effected by an independent revenue.

But the democratic party may turn round and become the assailants in the argument, by desiring me to look to Nova Scotia for any practical example of those maxims which I have been inculcating. There, say they, the King derives no means from the people of sustaining the weight of his government, and the House of Assembly has the unlimited controul over all the appropriations. In reply, I shall take the liberty of remarking, that the colonial policy of Great Britain has been of an accommodating and paternal character, and infinitely varied according to the peculiar circumstances of her foreign possessions. When she had founded a colony of her native subjects, for the purpose of extending her fisheries or trade on a coast of inhospitable aspect, her treatment of the infant settlement has been regulated by rules and maxims, different from those she would apply to one begun under happier auspices; or to another which might come under her dominion, as did Canada, when the sources of its wealth were pouring out a full stream of prosperity. This colony was planted in a region bleak and ungenial, covered with an unsubdued forest and far from being rich in cultivation. Besides, it offered an asylum to those who fled from the storm of the American Revolution, and preferred the dictates of loyalty to the claims of interest or the seduction of republicanism. The British feeling which was expelled from the United States, sought here a resting place and habitation; and for these political reasons, Nova Scotia has been ever regarded by the Mother Country with the greatest favour and most tender solicitude. The Crown has up to this period forgone the exaction of those duties which are strictly territorial, and has regularly drawn from the public funds of the kingdom the sum needed for the support of our Civil List.—But these are boons arising from the munificence of the Government, which might be warranted by sound considerations in the earliest stage of our infancy, but which cannot be expected by us in perpetuity, when our resources are evolving and

the elements of national prosperity in vigorous action. We see the time approaching, when England will call on us to take our full share of the burthen of our own establishment, and will relieve herself from the expenditure incurred entirely for our benefit. Already this "coming event is casting its shadows before," and giving us intimations that cannot be misunderstood. Lands are now ordered to be sold to settlers, in place, as formerly, of being gratuitously conveyed by the Crown; the quit rents which have so long slumbered are to be demanded; and foreign trade was opened to us avowedly in the expectation of our disburdening the mother country of our Civil List. Indeed, it seems quite preposterous, that her people, loaded as they are with a national debt contracted in the wars undertaken for the security and glory of the General Empire, and with vast naval and military establishments essential to her rank in Europe, should in addition be taxed, to pay the salaries of those officers who are doing the duty and performing the business of her Colonies. Is it equitable in us who are wallowing in comparative luxury, abundant in all the comforts of life, and these within the reach of moderate industry, with a scanty population and a wide and unoccupied country;—is it, I ask, generous and fair in us to murmur, unless the mother country shall persevere in drawing what suffices for our Civil List from the famished poor of Ireland, and the half employed labourers of Great Britain? But it is incontestibly obvious, that if the Representative branch of Lower Canada can make good its present assumption, and establish an unconditional control over the Civil expenditure; His Majesty must either renounce the country to these democratic leaders, or fall back on his own treasury for the means of paying his servants. Lord Dalhousie cannot accept his salary as Commander-in-Chief at the hands of Mr. Papineau, and afterwards pretend to refuse his behests; neither would the Judges be exempt from a contagious influence, were they to depend on an annual vote of the Assembly.

In this Province our Judges of every kind are provided for by permanent Bills ; and paid, with the exception of the Chief Justice, out of our own revenue ; and I believe it is now acknowledged by all enlightened legislators, to be essential to the purity of Justice, that those who preside on the Bench should be rendered independent, both as to the amount of their Salaries, and the manner in which they are bestowed. No act has been more eulogized than that of the British Parliament which made and constituted the Judges, after their appointment and elevation, independent of the Crown.

It is morally impossible, that these palpable truths in politics, could either be unknown or overlooked by the party in Canada, who have set themselves in opposition to the Executive ; and one cannot help believing that the dispute does not rest on constitutional principles, but originates in certain grievances or abuses, real or supposed, for which they wish to find a remedy. The Magnitude of their Civil List seems the chief topic of eloquent complaint, by all the advocates of that faction. If this be the evil which lies at the bottom of the strife and uproar, the Constitutional means of redress are lodged in the hands of the Assembly, which they could effectually employ without infringing on any great first principles ; and if they do not use those means, they leave room for the suspicion, in all the friends of good order, that this is merely a theme of popular declamation, to which demagogues in every age have resorted, to stir up the passions of the multitude, and the more effectually to cover their deeper and darker designs. This evil, in a greater or lesser degree, cleaves to every Government, founded on freedom, and that aims at ruling men by addressing their interests. The despot crushes every murmur by the axe or the bowstring, and drowns all opposition by open undisguised force. A milder method of binding men to his purpose, must be adopted by the Prince, who is to reign over the hearts of his subjects,

and is himself under the direction of precedents, ordinances and laws. The rewards of office, pensions, sinecures, are inseparable from such a Government, and must grow up with it in proportion as it becomes substantially free. These are the prizes in the lottery of politics, which the more restless and ambitious spirits are eager to secure ; while they strive with all their might to guard from injury and violation, the machinery and wheels that distribute them among the adventurers.

The Civil List of Lower Canada will be the subject matter of my next.

SCÆVOLA.

[FROM THE NOVA-SCOTIAN.]

LETTER V.

On the present state of the British Colonies.

MR. EDITOR,

In every State, where the principles of freedom have become predominant, the expense of the Administration has ever been a fruitful source of contention betwixt the Governors and the governed. The latter have almost without exception, shown an extraordinary solicitude to have their affairs managed with a scrupulous and watchful regard to economy ; while the former have been no less anxious to seize and appropriate for their own special use, as large a share of the public money as the genius of the Government or the temper of the people would allow. Hence wasteful extravagance and sordid parsimony have been the terms of reproach bandied, the

one from the other ; and this war of interest will never cease, so long as man is prone to selfish gratification and prefers his own to that of all others. It is a malady incident to human nature, for which, though there can be no radical cure, may be found palliatives in the salutary restraint of moderation. And this moderation must be respected and exercised by both. It is the sacred duty of the Rulers, to make every possible reduction on the public establishments compatible with the well-being of the State ; and it is equally that of the people to make liberal and ample allowance to those men who hold high and momentous trusts ; that they may be placed beyond the influence of those temptations and besetting sins, peculiarly appertaining to office.

It is easy to recommend this happy medium in loose and general language ; but there is no task which the politician has so hopelessly undertaken, as to mark the evanescent line by which it is to be bounded and defined. This is the difficulty that has given occasion to that clamour, which has exhausted itself in ringing the changes on corruption and venality, on saving and retrenchment. There subsists no standard, by which the civil expenses of any government can be precisely measured, and hence a door is left wide open, for the factious and discontented apparently to espouse the cause of the people, and to give vent to their own spleen and disaffection. But the impossibility of fixing on any universally acknowledged scale of expenditure has operated as mischievously, although differently on those who are posted at the helm of affairs, and led them often to an inexcusable and wasteful prodigality and to the multiplication of unnecessary offices. The revenues of an industrious and flourishing community swell and flow is so full a tide, as to drown all those careful, parsimonious and calculating habits that are the genuine offspring of poverty. The possession of a treasury that is never empty or quickly replenished, is dangerous to public virtue, and very apt to beget the desire

of providing for partizans and favourites, and of indulging in all criminal sorts of profusion.

These are the two extremes which with equal anxiety ought to be shunned ; because when the civil expenditure leans too strongly to either side, the balance is destroyed that alone can harmonize the various parties in the State. When the officers of Government enjoy emoluments or salaries out of all proportion to the ordinary style of living in the sphere to which they belong ; envy and dissatisfaction would be created and the cry of extravagance instantly raised. On the other hand, if the provision made for them be beneath that level, the situation would not be sufficiently attractive to men of birth and talents ; and public affairs would suffer from the incompetent hands to which, in such a case, they must be entrusted. This is the reason that the Civil List in every nation varies with the sum total of the revenue, and the advances that have been made in the acquisition of capital, and the corresponding display of opulence among the different orders of Society. A Judge of the Supreme Court in N. Scotia with £600 a year, can hold the first rank and maintain a suitable establishment—a sum which would be totally inadequate for the same end in Quebec—the capital of an old colony, abounding in comparative riches and surrounded with a fertile and populous country. Nine hundred sterling a year is there allowed to their Puisné Judges, and fifteen hundred to their Chief Justice. These salaries, perhaps, when compared with the ordinary profits of the profession, suffice to allure to the Bench, their best and soundest Lawyers ; and it is obvious that they must be raised to this point, to command the talents at the bar.

But these allowances whether at Halifax or Quebec, exorbitant as they may appear to our microscopic eye, would be accounted paltry and contemptible at Westminster ; and hence the English Government is compelled of necessity to augment the salary of their Judges, the

lowest to £6,000, and the Chief Justice and Chancellor to £10,000 per annum. Their Sergeants of first note, practising in the Courts, are, many of them, in the receipt of twelve or fifteen thousand from their professions and would not of course resign them for a seat on the bench unless a nearly similar sum was secured to them.

Observations of the same import and tendency might be made on other items of the civil expenditure in Lower Canada. Their salaries to every public servant seem excessive when compared with ours ; but as their revenue is more than double, these, it may be fairly presumed, are settled on a proportionate footing of equality. They give for instance to Mr. Papineau as Speaker £900 sterling, to the Clerk of the Assembly £450, to his Assistant £360 and to the Sergeant at Arms £90 ; while the contingent expenses of each Session, that seldom lasts as long as ours, rise to the enormous sum of £4,500, making the whole charge of the Representative body on the public purse annually about £6,800 sterling. It need not then be matter of surprise, that the charges of the Civil Government and of the Administration of Justice should amount to £58,000 sterling, when it is considered that these comprehend, the salaries of the Commander-in-Chief, of the Lt.-Governor, of the Provincial Secretary and his Assistant, of the Receiver-General, of the Auditors of Land Patents and of Accounts, of 13 Judges, of two Attorney Generals, of the Sheriffs of Districts, of Jailors, Turnkeys, and Bailiffs, of the Officers of Police, and the Keepers of the Court Houses.—But furthermore the whole expenses of their Executive and Legislative Councils, of the House of Assembly, of a numerous body of Schoolmasters, of Militia Officers and of the Inspectors of Roads fall under this head, besides Pensions and the Rents and Repairs of Public Buildings. Were all these items to be included in what is called the Civil List of Nova Scotia, it would be found that the necessary charge of conducting the Government, taking into consideration our com-

paratively smaller revenue, would be on a scale not much less extended than that of Lower-Canada; and that therefore great part of the clamour on the score of Pensions, Sinécures, and needless offices, set up by the faction that stand opposed to Lord Dalhousie's administration, proceeds less from a regard to public economy, than from the strenuous assertion of their unqualified right to appropriate all monies in their own way and manner, raised within the Province. This is the doctrine of the new political School that has lately started up among us, and is indefatigable in the conversion of proselytes; that His Majesty in these Colonies, in right of his Crown, possesses no casual, territorial or hereditary revenue which he can dispose of freely in the support of his Government, nor any Duties of Customs, although granted by his Parliament, which he can appropriate without the consent of the local Legislative Council and Assembly. I shall soon in the course of this discussion, seize an opportunity of exposing the fallacy and absurdity of this assertion of right—a dogma fraught with peril, and steeped in democracy, and which if maintained in its broadest acceptation, will infallibly embroil us all in a desperate struggle.

To return. No better method can be adopted to uncover the real views of the popular party in Canada, and exhibit clearly that something else than the waste of the public money is the cause of this mighty hubbub; than to set in contrast against theirs our resources and civil expenditure, and thus evince that there is no just ground for discontent in Lower Canada, more than in Nova Scotia.

The public income of this Province varies slightly from year to year, but may be set down at £50,000 sterling. Of this sum, our Civil List, strictly so denominated as being made up of the pay of the official servants of the

Government will exhaust about.....	£17,000
And the sum allowed us by Britain for the same purpose was last year £11,000 stg.....	12,200
Let us add to these the contingent expenses of the House of Assembly.....	£1,800
Repairs of Public Buildings.....	500
Expence of Education for the maintenance of three Academies.....	1,000
	—
	<u>3,300</u>

And our Civil List constructed on the same plan as that of Lower Canada will come to £32,500

The Public Income of Lower-Canada on the other hand may be reckoned about £115,000 exclusive of the £29,000—a fourth part payable out of the Duties for the use of the Upper-Province—If we deduct the supply required for defraying the annual charges of the Civil Government, and of the Administration of Justice, of the Legislature, of the Militia, of Schoolmasters, and of various other items thrown under this head and which supply is estimated at about £58,000 sterling, or £64,000 currency, we shall still have a balance left of £51,000 available for objects of internal and public improvement, and free and unimbarassed at the control of the Assembly. It is not then the want of funds at the disposal of the House nor any financial difficulty, arising out of the extravagance of the administration, that has created the troubles in Lower Canada; but it is the new assumption of rights in the popular branch which have been only claimed of late years, and in defiance of which they are willing to encroach on the prerogatives of the Crown.

For the further understanding and the clear exposition of this dispute, happily there is a document, published by authority, of the ordinary and extraordinary revenues and the appropriation thereof by the Assembly in the year 1825, under the administration of Sir Francis Burton,

when Lord Dalhousie was in England. In what manner the Lieut. Governor could have been so completely hoodwinked as to surrender the rights of his royal master and cast them at the feet of the Assembly, must forever remain a mystery ; unless he himself chooses to make a confession of the motives and views by which he was actuated—Whatever light may be thrown on this part of his political conduct in some future day, it is sufficient for us to prove that he allowed the Assembly to pass an annual Bill of appropriation 5 Geo. 4, chap. 27, in which they granted Salaries to the Governor and Lieut-Governor, to the Judges, Receiver-General and all other officers of the Crown, and thus directly interfered with the appointments of his Majesty. True, the representatives showed no passion for retrenchment at this time, but freely and fully gave the customary allowances to the public officers, being solicitous merely to establish and assert the principle that these salaries were their gifts, and that to a favourite, they had the power of augmenting them, as they bestowed an additional £1000 on Sir Francis Burton, giving him that year £3,500 Sterling, and £450 more as House rent.

But while the House were thus distributing Salaries and rewards with a liberal hand, and relieving his Majesty of all the burthen of his Servants, they thought proper to grasp those branches of his revenue that belonged to him since the era of the conquest. In the exercise of their sovereignty, the Auditor and Inspector General of Accounts received their commands to bring in a Schedule representing the different heads of income, and to place among these, not the duties alone levied by Provincial Acts, but those imposed by authority of Parliament in 14 Geo. 3, and in addition the casual and territorial revenues of the Crown. Thus they assumed the direction of public money, partly collected under a statute that was passed before they had a constitutional existence, and partly belonging to the inherent patrimony of the King.

*Extract from No. 14, of Public Accounts, Lower-Canada.
Net Income for the year ending 10th Oct. 1825.*

From Duties under Impl. Act, 14 Geo. 3,	£30,919	4	2 $\frac{1}{4}$
Deduction for Upper-Canada, of	7,729	16	0 $\frac{1}{4}$
	23,189	8	2

To Licences for Houses of Entertainment

under same Act.....	2,984	0	0
" Duties under Provincial Act, 41st Geo. 3,	16	19	3
" Casual—territorial revenue,.....	1569	18	8 $\frac{3}{4}$
" Fines and Forfeitures, (patrimony of the Crown).....	543	15	5 $\frac{1}{4}$
	28,304	1	7

" £5000 Sterling, granted to the King by Provincial Act, 35 Geo. 3.....	5,555	11	1
making in Currency.....	£33,859	12	8

This sum constitutes what has been designated, in the present disputes, as the Permanent Fund, and has always been applied by his Majesty through the medium of the Lords of the Treasury to the payment of the higher and more important officers of the Government. Twenty-six thousand pounds of it flow from the duties on rum, and other spirits, molasses and syrups, that were substituted in the place of the French taxes, 1774, and the residue with the exception of a very small sum, from the Crown revenues, which were specially reserved in the 6th, section of the same Act. We have now arrived at the fountain head of all the confusion. The House of Assembly deny the right of the King, or of the Lords of the Treasury, to apportion this money into parts and assign them to the respective officers of the Government. As the Representatives of the people, who contribute those taxes, they assert their right to appropriate this fund, and hesitate not avowedly to declare their intention of wresting it from the Crown. Their advocates interpret the 18th

Geo. 3—the famous Colonial Magna Charta—as having a retrospective application, and to have reference no less to the taxes that existed prior to its date, than to those that might be afterwards imposed. While the reigns of the Administration were in the feeble hands of Sir Francis Burton, they first succeeded, by adding to the permanent fund about £32,000 more, to pass a Bill of Supply, 5th Geo. 4, cap. 27, in which they specified the Salary of every Officer from the Governor downwards, and thus asserted practically their control over the whole revenue of the Province. In that Session by this means they disposed in their appropriations of £118,079 11 0½ Cury. being the total amount arising from all taxes, and the former available balance. But as they felt no scruples to trench on the regal prerogatives and revenues, little haste was shown to repair the error by displaying any sort of generosity to the Sovereign. They voted him no Civil List, in lieu of his violated revenues; and he was thus left prostrate at their mercy, dispossessed of all real power. The events which followed were all in the natural order of things. No sooner were the Acts of the Session transmitted to the Secretary of the Colonies, than the mischievous blunder of Sir Francis was discovered, and immediate measures taken to repair it. In an official dispatch of the 4th June, addressed to him on the subject, there is conveyed a censure for a breach of the Royal Instructions in having so tamely and passively renounced the fund appropriated for the support of the Government, and which was held independently of the local Legislature. By an ample apology, he endeavoured to make his peace, and sheltered himself by his not being possessed of positive Instructions, and by declaring that had they been communicated to him, he would have yielded the most implicit obedience. On his departure from the Province, Lord Dalhousie was stationed in the front of that battle which had been well nigh lost; and has been since labouring, but ineffectually, to restore harmony, and a good understanding. The disputes have come to a crisis dur-

ing the last session, and all men are turning their eyes towards Canada, to watch the result. The Assembly was suddenly prorogued in a speech, replete with manly undismayed feeling, and breathing his Lordship's unaltered determination to brave all consequences in the discharge of his trust. He accuses them of the assumption of executive authority, of a disregard to the accustomed forms of courtesy, in acknowledging his messages, and of a refusal to grant the supplies demanded in his Majesty's name. The democratic party in the Lower House, in an instrument which has gone the rounds of the Colonial Press, deny these charges, and aver that they have offered the supplies in the manner in which they were accepted in 1825, when Sir Francis, as before narrated, was cajoled and drawn into fault—that is to say, the Assembly will grant the Supplies to His Majesty on condition of their being allowed to seize his territorial and hereditary revenues, and appropriate these and all other public funds from Imperial and Provincial Statutes, without being under any control from the tenor of the Royal Instructions to the Governor, or from the warrants of the Lords of the Treasury. The contumacious resistance of the wishes of the British Government, and of the known will of the King, on the part of the Canadian Assembly, springs from the adoption of two principles which have been lately introduced into the creed of the new Political School, that is rising amongst us, and trying to give a bias to public opinion.

(1) That the King, though supreme head of the Government, and as such possessing in his own right certain branches of revenue in these Colonies, cannot apply them out of his mere good pleasure, without the consent of the Representative body.

(2.) That duties raised and leived by acts of Parliament of a date prior to the 18th Geo. 3, and appropriated to the use and benefit of the Civil Government, must merge

into the public income, and be placed anew under the control of the local Legislature.

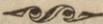
If these propositions are to be carried into effect, and backed with the whole strength of the General Assemblies, it is high time for Great-Britain, to modify and materially alter her Colonial policy, for she will shortly have no other power than simply the liberty of erecting our fortifications and defending us by sea and land out of her own treasures ; and every attempt to throw the burden on us, or even to pay our public servants out of the taxed levied here, will occasion murmuring and discontent, and afford us fresh opportunities of showing her our eternal ingratitude.

SCÆVOLA.

[FROM THE NOVA-SCOTIAN.]

LETTER VI.

On the present state of the British Colonies.



The most remarkable feature of the disputes in Lower-Canada, is the studied obscurity in which the opponents of the Government have affected to warp up their pretensions. Under colour of the most profound reverence for constitutional forms, of the most devoted attachment to the person of the Sovereign and of a conscientious regard to the best and dearest interests of the people, they have planted a masked battery, of such dangerous and tremendous power, that, should the match be ever applied to it, the whole frame of society and the safeguards of genuine liberty must be blown to atoms. But while they are constructing their works and drawing round their lines of

entrenchment, they try to pass as the professed defenders of the citadel which is the object of attack, and which of necessity must be rased to the ground till one stone is not left upon another. Their obvious design is to subvert the constitution ; but they wish to accomplish this by stratagem, not by force, and to trepan their constituents into a contest with the existing administration about principles which are not endangered, and which could not possibly be called in question if rightly understood. It is thus that lurking disaffection ever seeks to hide itself in the folds of political duplicity. It cannot, it dare not assume the bold, the uncovered front of righteous and upright patriotism. It expresses itself in vague and undefined language, and is fearful of uttering its secret and inmost thoughts. It alludes to past resolutions and past events as the grounds of its decision, but that decision itself is intentionally kept under a veil of mystery. Nothing about about it is clear, open, and explicit. It walks in darkness, and only dimly presents its shadowy forms. Like the phantoms of superstition, it flies the light, and loses its dreaded power, when distinctly seen and brought under notice.

I have been led into these expressions of honest indignation, by looking into the proceedings of the last session of their Provincial Parliament. When the motion was introduced for granting an aid to his Majesty for the support of the Civil Government, these respecters of the Royal authority—these champions of freedom evaded the question, not by a frank avowal of the principles on which they have made a stand, nor of the expenditure in the Civil List that they intend to retrench, but by a string of four Resolutions, in themselves unintelligible to most readers, and well calculated to keep the other Colonies in the dark as to the real designs of the party.

1. Resolved, that this House do continue to adhere to the Resolutions and addresses which it has made on the

expenses of the Civil Government, as recorded on its Journals.

2 Resolved, that the manner and form of auditing the public accounts, and accounting for the due application of the public Revenues, is insufficient for a just, correct, and responsible application of the public monies, and that there is still no adequate security against the mis-application of the funds deposited by law in the hands of His Majesty's Receiver General for the Province.

3. Resolved, that this House do not acknowledge, or in any way sanction any payments made out of the Public Revenue of the Province, which have not been authorised by an Act of the Legislature, or advanced on an Address of the House.

4. Resolved, that this House nevertheless continues disposed to grant a supply for the current year in the manner provided in the Act passed in 1825 and in the Bill of 1826.

These Resolutions, read by one not versed in the controversy, wear a remarkably meek and innocent aspect, and breathe a spirit no wise inconsistent with the exercise of the just rights and privileges of the lower Branch ; when properly understood, carry treason in their bosom and are armed with the dagger of the assassin. The truth is, that the Government cannot accede to these without prostrating its dignity, and surrendering the very semblance of power in the Province. What are the resolutions to which the House assert their adherence, and the Bill they propose to pass in support of His Majesty's government ? The Resolutions refer to an annual supply for the Civil List ; and the bill is to be constructed on the model of that, by which Sir Francis Burton was overreached in 1825, and which was formally and distinctly disapproved at the Colonial Office. It is the offer of an

annual supply and on conditions which the King never can accept without the derogation of his dignity, and the abandonment of his just and legitimate prerogative.— These obstacles on the part of the Crown are known to the House, have been the subjects of repeated discussion, and are distinctly expressed in the Instructions to the Commander-in-Chief. The supply on such terms is tendered by the house in the fullest conviction of its being rejected, and their persistence in this course is an act of undisguised resistance and hostility to the Government. Let Mr. Papineau and his associates speak out boldly and unreservedly to the world, and not in this manner plunge the poinard in the bosom of British liberty, with an insidious smile on their countenance, and the show of friendship by the extended proffer of their hand. The mean and ignoble enemy that lies in ambush is ever less respected, than they who take the field with the most imposing and even ostentatious display of their forces. Before we can clearly comprehend the meaning of these Resolutions, we must refer to the unfortunate Administration of Sir F. Burton as detailed in our last letter; when the House of Assembly artfully laid hold on the territorial revenue, and undoubted patrimony of the King, and on the taxes raised by the British Act of Parliament, 14th Geo. III. in lieu of the French duties devolving on the Crown at the period of the Conquest, and incorporated these into the public income of the Province,—thus asserting their right of control over every shilling levied on the subject. Should they carry this point, is it not undeniable that the supremacy of the Imperial Parliament is at an end, and the dignity and independence of the Executive power trodden under foot? What limits after this could be set to their pretensions. It would be a virtual overthrow of the Government, and can never be effected but by an appeal to the sword.

But to show the monstrous unreasonableness of this demand, let us enquire a little into the sources, whence the casual and territorial revenues of the Crown are derived, and into the claim of right attached to them, in virtue of the Royal prerogative.

It has been maintained throughout the whole of this political argument, that the justest and most correct notions of the frame of the British Government and of the rights and privileges of each of its three distinct branches, are to be best learned from the peculiarities of the Feudal System that rose on the ruins of the Roman Empire. This singular polity which was established in Europe, should be well studied and thoroughly apprehended by the politician who desires to obtain a clear insight, into the laws and constitution of England, or into the prerogatives of the Crown, or of the usages, forms and liberties of Parliament. The rights of the three co-ordinate branches of the Government were all equally founded in conquest and usurpation; and the property and persons of the aboriginal inhabitants were forcibly seized without any respect to equity or justice. —The Prince or Commander-in-Chief his nobles, and the freemen who followed his standard, were all, without distinction, involved in the same guilt of winning their possessions by the sword and holding them afterwards by the same tenure, and therefore it would be quite idle, in looking into the prerogatives of the Crown, to raise any objections on the score of their loyalty, by calling in question the original violence which gained and secured them. The titles of all the landed property in Europe, as well as in Britain, would be shaken, were any doubts to be cast at this late day on the right of conquest, by means of which alone they were acquired.

Conformably then to the spirit of the British Constitution, the Monarch in possession of the throne was the great proprietary of the kingdom, in whom were vested

all the lands over which his dominion extended, and from whose gift or grant they were conferred, bestowed, or conveyed to others, on such conditions and for such considerations as he chose to impose or accept. The performance of those conditions, some of which are merely nominal, and others little more than acts of feudal homage, is still essential to continue and perpetuate the title on which they were originally founded, and abundantly proves the necessity of recognizing the rights and prerogatives of the Crown, as the surest and firmest basis on which rests the landed property of the whole Empire. For the same reason it was, that estates forfeited by the commission of high crimes and treasons reverted to the sovereign, which he either might retain for the support of his dignity and government, or grant anew to any of his courtiers, who had merited his confidence or earned his particular grace and favour. But it is needless to multiply instances or proofs of this doctrine, which is as old as the times of the Saxons, and appears throughout all the revolutions and changes of dynasty to which England was subject.

When Britain, from the expansion of her commerce, began to plant Colonies of her own people, or by the chances of war, to conquer those of other States, the King, as matter of course, succeeded to those rights and prerogatives appertaining to him as liege Lord. He became immediately invested in the whole property of the new country, and parcelled out among the settlers, on such conditions as at once secured his own supremacy and provided for their prosperity and welfare. He was at liberty, from the motions of his own will, to sell it or gift it freely—to exact a quit rent in acknowledgment of his superiority or forego the payment of it—to reserve the mines and minerals, or grant them along with the soil—to clog the title with fines and penalties, and even to render it liable to escheat. No House of Assembly which may be afterwards called into existence in the

Colony, can pretend to have the least claim to these revenues of the Crown ; for this simple reason, that they were not of their gift, nor were they the fruits of their industry, nor in any shape ever belonging to them or their constituents as property. The House of Assembly can only direct, control and appropriate what itself gives ; and the moment it assumes to carry its usurpations into the Royal prerogative, the despotism of democracy is commenced, and should be sacredly resisted by all the rational supporters of freedom. The casual and territorial revenues of the Crown are as much the property of the reigning Sovereign, as are the rents, profits and fruits of the same lands, the property of their lawful owners. These revenues cannot be called taxes, and as such be appropriable by the Representatives of the people, without at the same time subjecting to their authority all the incomes derived by the Nobility, and landed proprietors from their various estates. All these remarks are applicable to the King, as the fountain and executor of Justice, as to him belong the fines and forfeitures incurred by breaches of the peace.

The only way in which the Crown can be deprived of this patrimony is by voluntary compact, where a given fixed sum is offered and accepted in compensation of it. This is the foundation on which the English Civil List is established. At various periods of our history, His Majesty, for the time being, commuted different branches of his royal income, for what he esteemed an equivalent ; and if the local Legislatures of these Provinces feel any unequal pressure from the existence and exaction of these dues, they must be bought up by providing an adequate support for the officers, judicial or others, that must be paid. To attempt wresting from the Crown these sources of revenue, without a just equivalent being offered and accepted, is at variance equally with the claims of natural equity and the maxims of the constitution.

SCÆVOLA.

[FROM THE NOVA-SCOTIAN.]

LETTER VII.

On the present state of the British Colonies.

In the conduct of this political argument with the party in Lower Canada, that stand in open opposition to the Government, we have been labouring to establish certain doctrines on Constitutional grounds, by which to unravel the perplexities of the disputes, that, if appearances can be trusted, is fast approaching to rupture. The dispute itself, to such readers as have only adverted slightly to the previous details, must by this time be readily comprehended and may be summed up in these few words ; that the House of Assembly assert a right to lay hold of the Casual and territorial revenues of the Crown, and of the duties levied by the British act of Parliament, 14th Geo. III. both of which constitute a Permanent Fund at present for the support of the Civil Government, and under the control and direction of His Majesty, and to appropriate this fund by *annual votes* in the same way and manner as the other taxes confessedly at their disposal. In this brief annunciation, the controversy will be seen to resolve itself into two distinct heads:

1st. They claim the specific appropriation of the Casual and territorial revenues.

2d. And they claim also the same power over the duties of Customs raised by virtue of an Imperial Act passed in 1774, anterior to the Colonial charter often alluded to 18 Geo. 3d.

In my last letter on the first of these heads, I advanced, that, according to the acknowledged principles of the British Constitution, the King was the supreme and original Lord of the soil over which he swayed his sceptre—

that he granted it to others under conditions, and with reservations, in the free exercise of his Sovereign prerogative—that these conditions and reservations—whether implying services to be performed, or rents to be paid—formed sources of revenue vested in and disposed by the Crown in England as well as in all other European feudal Kingdoms—that these royal revenues could be no more seized by the Representative Branch under the notion that they were *taxes*, than the rents of the lands in the hands of the proprietors,—that the great Nobles and the lesser freemen had no better title to the one, than his Majesty had to the other, as being both founded in the right of Conquest—that these ideas of the Constitution extended to and prevailed in the Colonies, and could not be infringed without subverting the Government,—lastly, that if the legitimate exertion of the territorial prerogative pressed heavily on the Colonists, we must adopt the practice of Britain, and purchase exemption from it by the establishment of a Civil List. At all events it is plain that whatever may be given in exchange for these revenues, must be permanent like themselves, and not liable to be altered by the levity or caprice of the popular Branch. The King on his accession became entitled to possess them in right of his Crown, and to enjoy them uninterruptedly till they pass into the hands of his successors; so the Civil List in lieu of them must be also an hereditary appanage of the Crown, and voted for the natural life of its wearer.

A very appropriate exemplification of the most of these views may be met with in the present condition and practice of Nova-Scotia. Here the King exercises all the functions of his territorial prerogative, without having excited a murmur or having been questioned by the local Legislature.—First of all, grants from the Crown of Forest lands are subjected to certain fees payable to the public Officers, and settled *as to their amount* by the sole authority of His Majesty. In most of those Grants, Mines

and Minerals have been reserved ; and accordingly a duty per Chaldron on all coals raised at Sydney in Cape Breton, and an annual rent for those dug at Pictou, have been demanded by, and are at the disposal of the Crown. Besides, orders have been now issued to sell all forest lands in future, at a regulated upset price ; and the quit rents are to be exacted. These various sources of territorial income have never so much as awoken discussion in the House of Assembly, but been silently and respectfully acquiesced in, as flowing from the legitimate powers of the regal prerogative. We have not yet been visited with those mighty revelations, that have decended in evil hour on the overstrained vision of Monsieur Papineau.

If the casual and territorial revenue should have been exempt from the unconstitutional grasp of the Canadian Assembly, so equally should have been those taxes levied by virtue of the British Act of Parliament, 14th Geo. III. and which were substituted in the room of the French imposts, existing at the time of the conquest. These now amount annually to about twenty thousand pounds currency, and have been invariably applied, under warrants of the Lords of the Treasury, in payment of the Salaries connected with the Civil and Judicial establishment. They ought to be considered as making part of the Civil List assigned to His Majesty for the maintenance of his Government ; and in this light they have been contemplated at the Colonial Office. Successive attempts have been made by the democratic party to get them into their own hands, that the power of augmenting and diminishing all salaries may be transferred from the King, or what is the same thing, from the Lords of the Treasury, to themselves ; and in this way they hoped to exert an efficient influence and control over the whole of the administration. This is the true meaning of their second and third Resolutions aforementioned, but is a *point which never can be conceded by the Crown, until the*

Cabinet come to the determination of abandoning the Colony. No compromise can ever be effected, while the principle is maintained by the House, that it is their undoubted privilege to seize the revenues which constitute their Civil List, and subdivide, apportion and apply these among the Public Officers, independently of the consent of the Sovereign. If the British Commons were to arrogate the like power, and lord it over the King, he would cease to reign and become an empty pageant.—By the command which he has for life over the enormous sum of £1,057,000, sterling, it is that he holds his pre-eminence at the head of the Government, can fix and pay the salaries of his official servants, can name his Ambassadors and support their dignity, and can incline the scale often by his own weight, of that set of men, that he calls to his councils. Without this mighty, overruling influence in the Crown, what danger of civil commotion on every change of Ministry! The present scene in the House of Commons, created by the elevation of Mr. Canning, demonstrates the necessity of guarding and upholding the Royal prerogative.—And it is this conviction on the minds of sensible men, that reconciles them to the expense of Royalty, as a necessary check on the violent passions of the contending parties, inseparable from a free Government. These prerogatives are essential parts of the system, and cannot be invaded with impunity. Whenever the Colonies succeed to disposses His Majesty of the revenues, belonging to him and indispensable for his Government; they are severed from the Empire, and must model and construct a constitution for themselves,

But it has been argued by the conductors of the Press, who have listed themselves in the cause of the democratic party, that powerful reasons exist in these Colonies to deter from the appointment of a permanent Civil List, that have little or no weight in the United Kingdom. They found this opinion of the dependence of the Legislative Council on the Executive Government; by

which they say, the Hon. Members of that body, some of them, from a regard to place and future preferment, must crouch and temporize—on the want of the powers of impeachment in the Lower House to keep in awe public delinquents—on the precarious appointment of the Judges who hold their seats not during their good behaviour, but the pleasure of the Crown. With these defects in the constitution given them in 1791, they infer that the House of Assembly could not act with sufficient vigor nor apply any effectual principle of restraint against mal-administration, unless they retained in their own hands the funds, to be voted annually, that were needed for the payment of salaries and other expenses of the Civil Government. On these and other grounds they cannot adopt the practice of the British Parliament and vest the Crown, from reign to reign, with the disposal of an ample sum for their Civil List, without a surrender of their dearest rights and the subversion of their just authority. How far these evils are felt in Lower Canada, is not for me to determine, but certain I am we have no such grievances in Nova-Scotia. Our Judges hold their places equally during pleasure, and such of them as have been raised to the Council are acknowledged on all sides to deliver on questions of legislation, bold, manly and independent sentiments. The power of impeaching the officers of the Crown would be, perhaps, too dangerous and terrible a weapon in a Colonial Assembly, and would jostle, often rudely and unseasonably, with the supremacy and consequent instructions and orders of the Imperial Government. It would be unwise to clothe a subordinate Legislature with the plenitude of authority, and the high and important functions that of right appertain to the sovereignty of the British Parliament; and therefore these imperfections are, I fear, irremediable and might be aggravated by the applications of political empiricism.

On the whole view of the case, one cannot help being of opinion that there is little call for our sympathy in these their complaints. Let us concede to the party that a mis-application or unnecessary waste of the public money is authorised to a certain extent, under the orders of the treasury—that some salaries are exorbitant—that a plurality of lucrative places is conferred on the individual distinguished either for the talent of flattery or servility—that pensions are secured to absentees and sinecurists—and that there is a lavish prodigality to the extent of £3000 which unquestionably ought to be curbed. What of all this?—Do not these clamourers know, that in every free State where men are to be governed by *interest*, or what those out of place call, *corruption*, such stains have ever been detected on the drapery of the court, and that the unsullied whiteness of doubly refined democracy becomes dingy on a sudden in such an atmosphere? Let them toss these idle complaints to the winds, and bless God that civil and political liberty can be enjoyed at the cost of so poor a sacrifice. Have not Westminster and St. James' furnished copious themes of radical complaint and lamentation on the self same grounds. Are not murmurs of a like kind beginning to be heard in the purlieus of Washington—are not these sturdy republicans already shivering under the aguish tremours of a costly display of profusion in some departments of the Executive? Free institutions where the voice of the people is heard, will always offer sufficiently efficacious correctives to the higher and more blameable degrees of improvident expense, and the lesser must be borne as incurable maladies.

But the main stronghold of defence taken by the dissatisfied party lies in their construction of the 18th Geo. III, by which they maintain every colonial Legislature was empowered thenceforth to appropriate every item of taxation levied and collected by act of the Imperial Parliament in the American Provinces, and West India Islands,

whether the act was of a prior or posterior date. I appeal to any lawyer who can look into the statute of 18th Geo. III. whether or not it be the intention of the law-giver, that our great Colonial charter should operate retrospectively. I think it clear as noon day, that such was not in the contemplation of the British Parliament ; and that it is a wresting equally of its letter and spirit, to give it such latitude of interpretation. Its effect is manifestly to be future, and accordingly it runs in the future tense. That to quiet the fears and apprehensions of His Majesty's subjects, " the King and Parliament of Great Britain *will* not impose any duty, tax or assessment whatever," payable in any of these colonies, but for the regulation of commerce, and the net produce of the duties arising therefrom, is to be delivered over to the treasury, and be at the disposal of the local Legislature. No former statute is repealed, except the 7th Geo. III. cap. 46, which was to raise on *Tea* a revenue available for the general defence of the Empire. That tax was abrogated, and the principle too on which it was founded—with an express declaration of what would be thereafter the great maxim of British Colonial Policy, in respect of taxation. But to set the matter at rest, as to the views of the Parliament, let us consult the Statute Book, wherever the 14th Geo. III. is referred to, and see if the Imperial Government ever meant to place the duties levied under it, at the disposal of the local Legislature.

1. They did not do it in the 31st Geo. III. cap. 31, wherein a constitution of King, Legislature, Councils, and Houses of Assembly, is conferred in the Upper and Lower Provinces.

2. They did not do it in the Canada Trade Act of 1822, for the Lords Commissioners of His Majesty's Treasury are authorized to divide the duties levied under 14th

Geo. III. ch. 88, into such proportions, betwixt the two Provinces of Canada "as to them shall seem meet."

3. Nor did they do it in the late final arrangement of the domestic and foreign trade of the British Empire, as is undeniably evinced in 6th Geo. IV. ch. 114, section 10th and 11th, for in the first of these it is declared, "that nothing in this act shall extend to repeal or abrogate, or in any way to alter or affect the 18th Geo. III. concerning taxation by the Parliament of Great Britain—Nor to repeal any act now in force, passed prior to the last mentioned acts (18th Geo. III.) ; and by which any duties in any of the British possessions in America, were granted, and continue payable to the Crown—Nor to repeal 31st Geo. III. cap. 31, (the Constitutional act of Canada) : and the eleventh section further enacts that the duties imposed by any of the acts before mentioned or referred to, passed prior to 18th Geo. III, shall be received, accounted for, and applied for the purposes of those acts. The permanent fund raised by 14th Geo. III. cap. 38, is four years prior to 18th Geo. III, was granted, and shall continue payable to the Crown, and must therefore be accounted for to the King, by the Lords of the Treasury, and be applied by them for the charges of the Civil Government, and the administration of Justice. No sophistry wielded by the most acute mind, can parry off this irresistible conclusion. It may cloud the understanding of the ignorant, it may deceive the obstinate and headstrong of a party, it may find some little loophole or evasion, but the clear understanding of the British Government as to its control over these revenues, expressed in all its consecutive acts, establishes beyond the shadow of doubt that the 18th Geo. III. was not to have a retrospective construction.

But I shall go further and throw down the gauntlet of defiance, even under the risk of being denounced as the Knight Errant of the Clerkarchy—the low cant phrase

by which the officers of the Civil Government are designated by the antagonist Canadian Press. Abuse there is the order of the day, and no writer can expect good treatment after reading the strictures and remarks levelled against the four letters of the "Nova Scotian," that appeared lately in the *Acadian*. The author of these letters is the temperate defender of Constitutional liberty, shows his regard for the prerogative of the Crown, without infringing on the rights of the Assembly, and displays with great strength of colouring and beauty of language, the fearful consequences of that course in which L. J. Papineau, Esq. has embarked. Notwithstanding, a perfect tempest of scurrility is directed against him, his words are perverted, and his best arguments turned into ridicule. Such has ever been the fate of political disputants.

I contend that the democratic party who gave this retrospective construction to 18th Geo. III. and under colour of which they found their claim of specifically appropriating by their local Legislature, the permanent fund vested in the Lords of the Treasury, cannot bring forward a single instance of any duties payable to the Crown, levied by acts prior to the colonial charter, which have been since surrendered to the control of the general assemblies either in America or the West Indies.

So tenacious has the British Government been of these duties that they have uniformly guarded and reserved them in their future enactments—obviously for the purpose of lessening the burthen of the Colonies to the Mother Country, and for that same reason we should submissively acquiesce, when we derive from her other mighty and more than countervailing advantages.

But furthermore, I desire that party to show me where the revenues of the territorial prerogative have been, on any pretence whatever, claimed except in Canada—or where the representative Branch of any colony has tried

to gripe within its clutches the Crown Duties of anterior date to 18th Geo. III. Their assumptions are not only at variance with the Constitution, but unexampled in colonial history. The struggle of the American States was directed against the right of taxation in the Parliament of Britain for the purpose of general defence, and by which the duties were to flow into the Imperial Treasury; but as this right is abandoned for ever in consequence of the liberal exposition put on constitutional Principles by the great and wise men of that day, there is not the slightest ground for the novel pretensions of the Canadian patriots. These form a new case in the contests of liberty, and contain in them the active elements of revolution. They aim at the prostration of the Monarchical power, and convert into intolerable grievances the slighter abuses which ever have existed, and always will exist in free governments.

To proceed in my argument, we have in Nova Scotia and New Brunswick certain duties of customs payable to the Crown by virtue of a British act 4th Geo. III, cap. 15, passed prior to the 18th Geo. III, which never have been claimed nor are appropriable by the local Assemblies.--These are at the Custom House in Halifax:

On Coffee.....	7s. sterg.	per Cwt.
" Pimento.....	$\frac{1}{2}$ d.	do. per lb.
" Molasses.....	1s.	do. per gallon.
" Wines from	} ..10l.	per tun.
Great Britain,		
" Do. from Ma-	} ...7l.	do,
deira, &c,		

These duties have always appertained to the Crown, and been at the disposal of the Lords of the Treasury; so that we have ample food for civil strife were our House predisposed to carry high constitutional principles against the kingly prerogative. But in the provinces on

this side of the St. Lawrence, settled by a people of British feeling and of British extraction, there is none of the leaven of French jealousy, and much of the intelligence and liberal tone of thinking that are the strongest bulwarks of constitutional liberty. The better class have read and thought and pondered on the science of politics, have made an estimate of the different forms of Government, and have from principle and conviction, given a decided preference to the mixed mode of--King, Lords, Commons--which has more effectually aided the progress of civilization, and laid a more stately fabric of glory and happiness than any other system of rule hitherto devised by the sagacity of the sage or founded by the power and dominion of the victor : we love not to quarrel with the maternal Government ; and to this hour the utmost harmony prevails among the three branches of our Legislature. Your Commander-in-chief while here among us was the idol of the Province and we discovered in him no acts of arbitrary authority, no desire to invade popular rights. How deeply to be pitied the Governor who quits his power in Halifax and assumes it at Quebec. Here the territorial revenues and the duties levied by British acts prior to the 18th Geo. III, are respected by the Assembly, and suffered to pass quietly under the direction of the Crown. He beholds a contented, a happy, a loyal population "growing with the growth, and strengthening with the strength" of their internal resources. He comes in his legislative capacity, into friendly contact with an intelligent and independent council, and with a free, temperate and manageable Assembly. He sees a country on which Ceres from her horn of plenty pours the fruit of summer, and the treasures of harvest: and he knows these blessings to be prized as the gifts of providence, and to be enjoyed under the protection of that noble and imperishable constitution that has withstood every shock and is endeared to the people he commands. But how sad the change whenever he is preceded by the usher of the black rod ! He is introduced at

once into a war of elemental discord, and has his administration embittered by the most cruel jealousies. There must be something in the people more than in the Governor, to produce these different effects, and it may be worth while for Mr. Papineau and his adherents to meditate on the causes--the real, the true causes of these unhappy disturbances.

SCÆVOLA.

[FROM THE NOVA-SCOTIAN.]

LETTER VIII.

On the present state of the British Colonies.

MR. EDITOR.

Last week we were at some pains to obviate the objections of the democratical party against a permanent provision for their Civil List, and now one other view, much insisted on, and in more than one or two instances conspicuously brought forward, remains to be noticed; that nothing may be omitted in this discussion, having a show of reason, or to which the slightest importance is attached by the opposers of Lord Dalhousie's Administration.

They argue thus, that though a revenue was created in Canada, by 14th Geo. III. and placed by the act at the disposal of the Lords of the Treasury for the maintenance of the Civil Government, and the judicial establishment, yet the subsequent statute 18th Geo. III. according to a just and liberal construction, restored to the local Assembly, the controul over these taxes; and for this unanswerable reason, that the same immutable

justice which led the King and Parliament of Great Britain to give their assent to the Principle, "That the Colonial Legislature should direct, dispose of, and appropriate all duties raised from the people," will equally apply to past as to future time; and that the rights, liberties and privileges of the Commons are coeval with the constitution, and depend not on any act which may be passed prior or posterior to another. In other words, they contend that although the Mother Country has thought fit to give the Great Colonial Charter a prospective interpretation only, this proceeds from a narrow and illiberal policy inconsistent with the lights of the age, and the growing ascendancy and adoption of popular opinions. Such are the sentiments of the angry wranglers in Lower-Canada, and they defend these in the daily papers with no little art and a perseverance and obstinacy that would befit a better cause. But their view proceeds on a palpable misconception of that celebrated statute, the true intent and meaning of which can be best gathered from the history of the times. And while the present ferment is working in these colonies, it is of pre-eminent and prodigious importance that its fair and legitimate construction be correctly set forth and generally understood.

Early in the reign of His Majesty, the Parliament of Britain first conceived the idea of rendering the American Province tributary by the imposition of taxes, which were to be available for the support of the General Government. Accordingly in 1764 the House of Commons passed resolutions declaratory of their right to tax and bind the Colonies in all cases whatever, & the next session the Stamp Duty Bill passed both houses, and received the royal assent on the 22d of March. The object proposed to be gained, was to put the Americans on the same footing as the inhabitants of Great Britain, in respect of contributing to the general defence of the Empire; and to

raise the supplies for the year with the greater facility. It was the first step in a sweeping and extensive scheme of taxation, which as it acknowledged no limits, might be carried on without end. The bold resistance made against this act, and the unanimity by which all the measures were encouraged to prevent its going into effect, particularly in Boston, undoubtedly led to its hasty repeal. It also met with a host of enemies, both in Parliament and in the country, who condemned it as subversive of one of the main pillars of constitutional liberty "to tax any subject, foreign or domestic, without his consent." Stamps, they maintained, could not be levied, and collected in America, by authority of Parliament, and the produce of them remitted to England, without infringing the most sacred rights of the colonists, who by their own assemblies could alone exercise legitimately the power of *internal taxation*.

But though the Ministry were compelled, with the view of allaying the irritations that had spread so widely, to abandon this claim, yet they adhered to the belief that the right of *External* taxation remained in full force,—and could be safely asserted by the Imperial Parliament. Under this conviction, a new Bill was introduced 1767, and passed apparently with general approbation, to impose certain duties of export on *tea*, glass, paper, and painters' colours, shipped from Great-Britain to the Colonies. In this way the Americans would be made to contribute towards the necessary supplies for the carrying on of the Government, and the only difference would lie in the mode of collecting the taxes from them. This device was hailed by the friends of the Administration as a happy deliverance from the former difficulties, and as being perfectly accordant with the genius of the constitution. It was a power which every free state could exercise over foreign trade, in selling the wares and merchandize, which were the products of its art and industry, at whatever price it might choose to demand. But

the Ministry, in their anxiety to raise a revenue from the Colonies, and to retrieve, at least in part, the errors they had committed, and the imbecillity they had betrayed, seem to have forgot, that the rule which in this second instance they had precipitately adopted, might be admissible and perfectly harmless, when applied to independent countries, but was impregnated with all the elements of mischief, extortion and oppression when extended to Colonies, which were shut out of every other market but that of the Parent Government. If a foreign Prince was so impolitic as to impose high duties on the articles of export from his dominions, he only crippled his trade and gave force and vigor to a counteracting principle ; for the purchaser, guided by the universal impulse of self-interest, would seek and repair to the cheapest market, and cease to traffic on disadvantageous terms. The Colonists had not this liberty, and they were therefore bound to resist any attempt on the part of the Mother country, to lay taxes on exports, needed for the consumption of her foreign dependencies. This bill of revenue met with no kinder reception from the Provincials than the former. In Massachusetts great discontent prevailed ; and associations began to be formed for encouraging domestic manufactures and discontinuing the import of British products which might be charged indefinitely, with impost after impost, at the discretion of the Ministry. These troubles acquired great strength and soon propagated themselves through every nook and corner of America. Ineffectual attempts to stop their progress were made more than once by the British Government, attempts that vacillated betwixt feebleness and vigor, easy concession and high handed force ; but all was unavailing, for the injuries given and received left no other alternative save the decision of the sword. The difference, as is apparent from the foregoing details, was simply this : a claim of right on the one side and a denial of that right on the other, to raise a revenue from the colonies, for the *ends and uses of the general Government* either by *internal* or *external* taxation.

These disputes broke out into open warfare in 1775, but the question as to the power of Britain to levy taxes in the colonies for the expences of their own civil government was never mooted in all the addresses, petitions and remonstrances, which the quarrel occasioned. When, therefore, in 1778, the third year of the Revolutionary War, the colonial charter, 18, Geo. 3, was passed, the undoubted intention was to renounce the right of taxation claimed by the Parliament of Britain, and exemplified in the stamp and Tea acts, and which had engendered the then disturbances, and alienated the affections of the Thirteen United Provinces. But it never was nor possibly could be the design of the British Government to yield up all the duties payable to the crown by statutes which were then in force, for all such were at the very passing of this act, then claimed and have ever since, without any interruption, been appropriated under the direction of the King for the purpose specified in the acts themselves. Neither is the application of these crown duties at variance with the Colonial Charter. It abandons only a claim of revenue to Britain, and these duties belonging to the King by prior acts go towards the payment of the Civil List in every colony where they are collected, and in no case do they exceed the sum needed for this indispensable purpose. The Colonial Charter has therefore never been violated; for the produce of these duties has in no case left a surplus to swell the receipts of the Exchequer.

The Crown duties in Nova Scotia under 4th Geo.

III, chap. 15 amount to about annually..... £2000

Our Civil List voted by Parliament as appears by

the late London papers, to.....£10,645

The above duties in New Brunswick..... £ 950

Her Civil List by same advice..... £5000

The permanent funds both in Upper and Lower Canada are known as being quite inadequate to the support of the Civil Government. Observations of a like kind may be extended to the West India Islands, so that it may be truly affirmed that all the duties raised by acts of the Imperial Parliament in this western hemisphere, prior to the 18th Geo. III, are not sufficient to meet the respective civil administrations and that these Plantations and Colonies have up to this hour been a burden on the Mother Country. In my next letter I shall enter upon the remedy.

SCÆVOLA.

[FROM THE NOVA-SCOTIAN.]

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LETTER IX.
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On the present state of the British Colonies.

MR. EDITOR,

Having now arrived by gradual steps at the close of our political argument, conducted throughout, with a due regard to the free principles of our excellent constitution, and touching on such passages of past history as could be aptly introduced by way of illustration, it only remains to point out what appears the safest practicable mode of composing the dissensions that have so long agitated Lower Canada; and in entering on this field, I shall abstain from all lengthened discussion, and prescribe what occurs to be the most effectual remedy in two or three propositions.

1st. The Representatives of the people can assert no control over the territorial revenues of the Crown nor over fines and forfeitures, which are its hereditary patrimony, without committing violent injustice on the acknowledged prerogative of His Majesty. It is an act of grace to have applied these towards the payment of the Civil List, which should have been received with thanks, and no attempt whatever should have been encouraged by the intelligent part of the House of Assembly in Canada to seize and appropriate these, without the consent of the King. The whole strain of English history, and the unvarying usages of Parliament, bear me out in this position.

2nd. The duties accruing from the Imperial Act 18 Geo. 3. so often referred to, with the £5000 afterwards granted by the Provincial Legislature in 1795, constitute a fund for the support of the civil Government and the administration of justice, which is for ever placed beyond the control of the Representative body, unless they can contrive to obtain the Royal assent to repeal the two laws. The King by his simple veto can effectually prevent their interference; and he cannot be forced into the measure without dissolving the Government. Let the House then quietly and respectfully submit to let these duties pass towards the Salaries of the more necessary and essential officers of the government, and to allow the King, without murmuring, to subdivide and appropriate them according to his Royal will and pleasure. It is plain on constitutional principles, that they cannot dispossess the Crown of this fund without a desperate struggle, and without attacking the supremacy of Parliament. All the other Colonies in the West Indies and America, acquiesce in the exaction of duties imposed before the 18th Geo. III. and the Canadians should cheerfully accede to a rule which is of universal operation. While these duties are applied towards the necessary charges, incurred for the supply of the local government, any

supposed extravagance in its expenditure is a slight grievance, and can never justify any determined opposition. If the British Commons were to quarrel with the Executive for every flagrant case of sinecure and pension, or for every exorbitant salary, a speedy end would be put to that harmony which is so essential to their useful and joint co-operation.

3rd. Should the territorial and casual revenue and this permanent fund above described be acknowledged insufficient for paying the essential officers of the Government, the Judges and all other charges which fall on the Civil List in England; let such further sum be voted forthwith during the life of the King, in order that he, stationed illustriously at the head of the State, may be enabled, out of his royal munificence, to satisfy all those claims that may be made for the conduct and maintainance of his government. This cannot be dispensed with on any consideration, without derogating from his dignity and encroaching on his executive power. The amount of the Civil List *must be granted to him in gross*, and he must deal it out among his servants. Like the rental of a Baron or a Noble, which is also collected from the industry of the people, it must be placed at the sole and absolute disposal of the Sovereign, without the humiliating mortification of being checked and fettered in every item of the expenditure by the people whom he governs. But even here the popular Branch can exert that principle of restraint, lodged in it for wise and useful purposes, by limiting the aggregate amount which it may will to confer on the Monarch. England presents the example of very different sums having been bestowed at the commencement of the respective reigns. George III. on his accession received £800,000 sterling, which was a considerable augmentation on that of his predecessor, and his present Majesty enjoys £1,057,000 for the charges of his Civil List. But it was voted to him in a round undivided sum, and once for all on his ascending

the throne. Many of the salaries chargeable on it are known, but much of its expenditure is unknown, and none of it is accounted for. This respect for the dignity and prerogative of the Crown must be transplanted into the Colonies, if we are desirous of preserving the balance of the Constitution. To provide for the first officers of the Government, by annual votes of the Assembly, and thus deprive the King of the disposal of a single shilling, would be a violation of all decency, and end in oversetting the present order of things. He must have an independent fund somewhere, and from it he must derive those necessary expenses which he will be called on to defray. These, I believe are constitutional ideas, however abhorrent to the levelling temper of democracy.

4th There are many charges connected with the civil government of every colony that ought only to be provided for annually; and it would be a dereliction of duty in the House of Assembly to settle them on any permanent establishment. The annual control of that Branch over the expenditure is the most sacred pledge intrusted to their keeping, and the surest guarantee of their being periodically and regularly summoned to the exercise of their legislative functions. While the Crown, therefore, should be invested with a sum that may suffice to keep the great and master-wheels of the Government in steady and uniform motion, the House of Assembly should retain the power of guiding and impelling the lesser. Though there are many powerful reasons, drawn from constitutional sources, for making independent of the people the Governor-in-chief, the Lieut. Governor, the Chief Justice, the different Judges, the treasurer, the Attorney and Solicitor General, the Pro. Secretary, the officers of Customs and Excise, and such like indispensable public servants, there are none for extending this privilege to assistant Secretaries and clerks, to Registrars and Translators, to the messengers and keepers of the public offices, to the inspectors of accounts, to sergeants at arms,

nor even to the Speaker of the Assembly, and the President of the legislative Council. The servants of the Public should never be made independent but to secure some obvious and substantial advantage, and every Colonial Assembly will do well to copy those prudent and sober rules of practice which have grown up in England with the dawn and maturity of her liberties. In Nova Scotia a great deal of the expense incurred for the support of our Civil Government, is voted annually, and no inconvenience is found to accrue from what is so much dreaded,—the wavering and irresolute temper of the Representative body. But what may be called in strict propriety of language our Civil List, is securely placed beyond the touch of the Assembly. All our Judges, for instance, have their situations and salaries fixed by perpetual Bills, passed in the Colonial Legislature;—Our Lieut. Governor, the Chief Justice, the Crown Lawyers, the Surveyor General, &c. are paid by the British Government; and the officers of the Customs are authorised by the Lords of the Treasury to hold their Salaries out of the gross produce of the duties which may be collected by them.

But though these high, essential, and important officers are rendered independent, and consider themselves as more immediately the servants of his Majesty, all others of inferior account have to look to the annual votes of the Assembly for their support, and no demand has ever been made to establish these on a more permanent footing—Such, however, is the loyalty and good sense of this Province, that no doubt can be entertained, when the time shall arrive for throwing on us the burden of our civil list, of a ready compliance on our part to vote His Majesty, for the term of his natural life, such a sum as will cover the necessary disbursements. We see that day fast approaching; and are prepared to meet it without shrinking from our duty.

The path then for the Representatives of Lower Canada is clear and patent, provided they harbour no machinations, hostile to the existing government. Let the permanent fund remain, without any further attempts to seize it, in the hands where the act of the Parliament has deposited it; and let them grant such further aid to His Majesty, during his reign, as in their honest judgment may provide for the necessary charges of their civil establishment; and, after having done what the constitution requires of them, they may hold up their heads boldly and make a firm, manly and determined stand. Should they adopt this course, I am satisfied they will be met half way, by the Executive, in the true spirit of conciliation; and the wounds will be closed which have so long been festering.—At all events the other Provinces will see where the blame lies, and will be inclined to throw the weight of their advice and assistance into that scale which leans to the side of justice. If this offer be made and rejected, the democratic party will even acquire a greater accession of strength, for the friends of the Government would be staggered, and something like proof produced that there existed with the Executive a love of usurpation over popular rights and a culpable desire to stretch the prerogatives of the Crown beyond their just and natural limits.

That these nine letters may be conducive to the restoration of peace and mutual harmony is the sincere prayer of

SCÆVOLA.