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PROVINCIAL AFFAIRS.

From the Prince Edward Island Register of 6th May.

LEGISLATURE OF PRINCE EDWARD ISLAND
Differences between the Two Branches.

We stated in our last that the House of Assembly had passed three Bills of Supply for the services of the current year, and had subsequently passed a Bill of Appropriation, directing the uses and services to which the Revenue to be raised under these Bills of Supply were to be applied. His Majesty's Council assented to the Supply Bills, and on the 28th April demanded a Conference with the Assembly on the subject of the Appropriation Bill. On motion, in the Assembly, that a committee of Conference be appointed to meet a similar committee of the Council, the House divided; the following voting in favour of the motion, viz:—The Attorney General, Messrs. Campbell, Baristo, Deckendorf, Mabey, Cambridge, Coffin, Nelson and Montgomery; And Messrs. Hodgson, Owen, Jardine, Hyde and McNeill against it. A committee being appointed, in compliance with the sense of the majority, the following were the instructions given to it by the House previous to entering upon the said Conference.

"The House orders the Committee appointed to confer with the committee of His Majesty's Council on the bill of Appropriation, to enter into no discussion with them on any items of appropriation, and to inform the Committee that any attempt to do so will be deemed an encroachment on the rights of this House, in matter of supply.

The chairman of the committee, on his return to the Assembly, stated the substance of the conference; that they had adhered strictly to their instructions, and refused to listen to the observations of the Council committee on the several items of the appropriation bill.

On the day following (Tuesday 29th) the Council sent down the bill of appropriation, disagreed to, accompanied by the following message.

"Ordered, on motion, that the Appropriation bill be sent down to the House of Assembly with the following message.

"Mr. Speaker,
"His Majesty's Council, without any intimation of intrenching on the privileges of the House of Assembly, have thought it incumbent on them, on the rejection of the appropriation bill sent up to them, to state the reasons which have induced them to reject it.

"The bill of appropriation was sent up to His Majesty's Council on Friday last, when it was taken into immediate consideration; and it appearing that the sum appropriated far exceeded the Revenue contemplated to be raised, and that several items of the appropriation were deemed very objectionable, His Majesty's Council aware that they could not of themselves amend a money bill, and anxious that the bill should not be altogether lost, took, as they conceive, the only constitutional course of explaining their objections to the bill, by requesting a conference with the House of Assembly on the subject matter of it. The House of Assembly complied with the request of His Majesty's Council. The Committee on going to confer with the committee of the House of Assembly, were commanded to deliver a written message for the information of the House of Assembly, in which His Majesty's Council, without relinquishing the right claimed by them in their resolution of the 27th October, 1825, stated it to be their intention to waive the privilege then claimed for the present Session, provided the bill of appropriation contained no other items of expenditure than those to which His Majesty's Council would have been inclined to have given their assent, had they been submitted separately for their consideration; but at the same time that His Majesty's Council would have been disposed to concede minor points of difference, from their anxious desire to promote the public welfare, they conceive that their situation in the Government involved a duty, the departure from which would have been a sacrifice of principle, and that they could not assent to.

"In the first place, His Majesty's Council, although they claimed no right of originating, considered it to be incumbent on them, to guard against any appropriations, however desirable, which may exceed the disposable funds of the Colony, and thereby lead to public embarrassment. And secondly, His Majesty's Council considered it equally their duty, to prevent, if possible, an improvident expenditure.

"In support of the necessity of the first assumption, the committee were directed to lay before the House of Assembly, a statement of the net Revenue raised by the bills of supply passed last year, together with the appropriation of the monies arising from these bills, from which it would appear, that the former amounted to £1423, and the latter to £2161, leaving a deficiency of Revenue to meet the appropriation of £738, for which no provision was made in the present bill.

"The Committee were further directed to state, that the items of appropriation included in the bill then before the Council, amounted in the aggregate to about £2823, which the House of Assembly proposed realizing by a Duty of Import, similar to that which was comprehended in the two bills passed last session, with the exception of the Duty on Foreign Spirits and Wines, which were 7d. per gallon less, and Rum imported direct from the West Indies, which was reduced 1d. per gallon; To these was added an ad-valorem Duty of £2½ per cent on all Goods, Wares, and Merchandizes imported into the Island, with certain exceptions; but the latter had yet to receive the Royal Assent, being a tax on British manufactures; from the average of last year, and the present depressed state of commerce, would not admit of a higher calculation, the utmost Revenue that could be expected from the first two mentioned duties, would not exceed £1270, the reduction of duty being equal to about £200; supposing the ad-valorem duty to be in operation, this would cause an addition, at the most sanguine calculation, of not more than £500, which would make the Revenue to be raised under the bills which had passed

this Session to amount to £1870, being a less sum by nearly £1000 than the House of Assembly had appropriated.

"His Majesty's Council had directed the above statement to be made in conference, under the impression that the House of Assembly would have been induced to have limited and amended the bill of appropriation in such a way as to have brought it within the funds at the disposal of the Legislature, and to have met the views of each branch, so that the bill might not be perilled; in furtherance of which, the Committee were directed to state, for the information of the House of Assembly, those items of expenditure included in the appropriation bill which appeared to His Majesty's Council the most objectionable, and to which they would not have been inclined to have given their assent.

"The committee on their return from the conference, reported, that they had proceeded thus far in delivering the message of His Majesty's Council, and were about to explain the objectionable items, when they were interrupted by the Attorney General, who although not named as one of the Committee in the message delivered at the bar of His Majesty's Council granting a conference, acted as chairman, and produced a written order from the House of Assembly, inhibiting their committee from entering into any discussion on the items of expenditure, an interference in which, in any way, on the part of the Council being considered an infringement on their rights and privileges; and he further stated, that the committee were not authorised to receive any message in which any observations were made on the different appropriations.

"His Majesty's Council were thus precluded from offering any exception to the bill, on its merits, although there were many of the 14 items of which it was composed, which His Majesty's Council deemed very objectionable, and to which the funds at the disposal of the Legislature were very inadequate.

"His Majesty's Council, aware that they could not amend, and having been refused in conference to be heard on their exceptions, conceived it to be their indispensable duty, and conducive to the real interest of the Colony, to return the bill of appropriation sent up to them, not concurred in.

J. E. CARMICHAEL, C. C.

Council Chamber, April 29th, 1828.

[To this message the House of Assembly replied as follows.]

"The House of Assembly has taken into consideration the message of His Majesty's Council, containing the grounds and reasons which have induced them to reject a bill appropriating the supplies granted by the House of Assembly to His Majesty, during the present Session.

The House of Assembly cannot help being struck with the novelty of the practice now adopted by His Majesty's Council, of assigning for the consideration of this House the reasons for either assenting or dissenting to any bill which the Assembly may have sent them; and to express the opinion of the House, that such a practice is of every evil tendency, and is ill calculated to promote the service of His Majesty and of the Colony. Neither the one nor the other can be served by a war of Manifestoes.

"The House of Assembly consented to a conference requested by His Majesty's Council on the subject of the Appropriation bill, hoping that some verbal amendment in the bill might have been all that the Council would have suggested; but instead of this the committee of the House of Assembly was met by that of the Council with a laboured paper to revive claims of the Council in matters of supply, which the House was willing to hope, and indeed had been led to expect, were now extinct. But the committee of the Council endeavoured, from the same paper to convince the committee of this House, not only that the amount of the appropriations exceeded the revenue that could be raised from the bills of supply, and that the calculations of this House on that subject were quite erroneous, but that various items of the appropriation were themselves unfit. The committee, however, of this House had previously been instructed to enter into no discussion on this latter subject, as one quite inconsistent with the exclusive rights and privileges of this House in matters of supply. The committee of this House very properly abided by its instructions, and would entertain no discussion on the items of appropriation.

"The message of His Majesty's Council appears only to be an enlargement of that which its committee of conference had been directed to read to the committee of the House of Assembly, and this House can consider such message in no other light than a deliberate attack on its rights and privileges.

"The revenue bills for the year have been very carefully considered by the House of Assembly, in all their bearings and relations, and it is perfectly satisfied that the revenue to be raised is commensurate with the proposed expenditure of the Colony, and of this the House of Assembly takes leave to say that it is the sole judge.

"The House of Assembly cannot help noticing that part of the Message of H. M. Council, which intimates that the appropriations of the Assembly may exceed the disposable funds of the Colony, and thereby lead to public embarrassment, and that it is the duty of the Council to prevent, if possible, an improvident expenditure.

"The House of Assembly may remark on this, that hitherto there has been no excess of the disposable funds of the Colony, and no such public embarrassment as is predicted has arisen, neither, according to all probable and judicious calculation, is there the most distant risk that should arise; and this House thinks that the remarks of the Council upon improvident expenditure might well have been spared, and is hardly consistent with that decent courtesy of intercourse which once prevailed between the two branches of the Legislature.

"The House of Assembly does not deem it either necessary or compatible with its privileges to enter into any discussion with His Majesty's Council on specific items of expenditure,

but would beg leave to remind that Honourable body, that the large Revenue which has been permanently granted by this House to His Majesty, is in a very great part of it yet open to its appropriation, and although this House does not deem it expedient under the constitutional administration of the present Lieut. Governor, specifically to appropriate it, yet the period may arrive, when the House of Assembly will feel itself called upon to exercise its controul over it.

"This House cannot leave the message of His Majesty's Council, without noticing the singular impropriety of their having remarked individually on a member of the Committee of conference sent by this House, to meet that of the Council, insinuating as if that member had been no regular part of the Committee, which they did know to be quite contrary to the fact, and of which their committee of conference was distinctly and fully informed.

"The House of Assembly will now conclude by observing, that it questions not the undoubted right of His Majesty's Council to reject the Bill of Appropriation, or any other bill which may be presented to them by the Assembly, nor can it constitutionally enquire why or wherefore they do so; but as His Majesty's Council have been pleased to assign their reasons for the adoption of so unusual a course as intercepting His Majesty's supplies for the use of the Island, and thereby stopping all the public works so requisite in a young country, this House cannot but express its entire dissent from a measure so replete with impolicy, and so entirely at variance with the best interests of the Colony.

"On motion, ordered, that the foregoing answer to the message of His Majesty's Council brought down to this House by their Clerk with the Appropriation Bill, be sent up to the Council.

WILLIAM CULLEN, Clerk, H. A.

Assembly Room, May 1st, 1828."

"The Attorney General was by the Assembly appointed chairman of their committee, but, by a mistake of the Clerk, his name was omitted in the message referred to. The mistake was explained at the conference by the other members of the committee, and we cannot but express some surprise, that the Council should have thought so very insignificant a circumstance merited any such formal remark.

[To be continued.]

FROM ENGLISH PAPERS.

FRANKFORT, April 12 — [Private Correspondence.]—

The following is a brief account of the Austrian forces:—
1. The army, properly so called, consist—1st. of fifty-eight regiments of infantry of the line, of three battalions each, containing six companies of fusiliers; the grenadiers form a separate body, to the number of twenty battalions, of six companies each.—2d. Of twelve battalions of chasseurs.—3d. Of a regiment of Tyrolean chasseurs.—4th. Of the national infantry of the frontier borders of the Ottoman territory, consisting of seventeen regiments organised like those of the line.—5th. Of six battalions garrisoned at Crenowitz, [Buckowine;] Leopoldstadt, [Hungary;] Brody, [Galvania;] at Zara and Venice.

The artillery, under the command of Archduke Lewis, reckons five regiments of infantry, one corps of tradesmen, bombarding labourers, &c. The Archduke John has the command of the army du genie, including the corps of engineers, sappers, and miners.

The cavalry consists of thirty-seven regiments, of which six are cuirassiers, six dragoons, seven light horse, four hussars, and twelve husars. All the regiments of heavy horse form three divisions, each consisting of two squadrons of from a hundred to one hundred and seventy horse. Those of the light horse make four.

There are fourteen commanderies or military divisions whose head-quarters are.—Vienna, Gratz, Prague, Brunn, Lemberg, Offen, Peterwaradin, Agram, Temeswar, Hermannstadt, Venice, Zara, Milan and Padua.

We cannot form an accurate estimate of the entire of the Austrian forces, but, from the best calculation, it approximates to 200,000 or 250,000 men, not including the Landwehr, which is now so organised that the first part may be ready to march at a short notice.

GREECE.

VIENNA, April 9.

The 9th No. of the *Universal Gazette* of Greece, of the 16th Feb. N. S. which we have received by way of Zante, contains the proclamation of the President, issued in the form of a circular, respecting the establishment of a bank, and the decrees that has been published on the subject.

The circular is to the following tenor.

"Greek State.—The President of Greece.

"I have communicated in writing to the Pashoffenitz, as well as verbally to several Alizins, what I considered, when I took upon me the great burden of the direction of the dangerous affairs of my country, to be my duty, under the circumstances, to submit to the consideration of the three Allied Courts asking from their liberality pecuniary assistance to continue the sacred struggle of our country; at the same time I communicate to you the hopes which I was encouraged by the Ministers of each of those three Courts to entertain—the speedy realisation of which I have incessantly turned my attention to since my arrival in Greece.

"But however favourable my hopes may be—however constant my exertions—however great the good will of the three Courts towards our country—the expected succours cannot be received so soon as the actual state of the country requires. It is therefore absolutely necessary that the government should, first of all, bring all the branches of the public service into equilibrium, and be able to put in motion the brave Greeks as well by land as by sea, to deliver the holy soil from the Turks, and to deliver the commerce of the Archipelago from the insecurity proceeding

from piracy. While we in this manner show ourselves ready to do as much as depends upon us, we may with the more reason depend on the succour for which we apply, and by means of which we may honourably contribute to the deliverance, the restoration, and perhaps to the independence of our beloved country. So long as Greece remains inanimate and immovable under the burden of misfortunes and weakness—so long as it suffers the enemy to subsist on the resources of Greece itself—so long as it endures the dishonour and shame which the perverseness of the wretches brings upon it, who disgrace its flag by piracy—so long will the three Monarchs, whose good will it enjoys, justly doubt whether it is possible to accomplish for its benefit the salutary objects for which the Treaty of London of the 6th of July was concluded, and for which, as has been said elsewhere, the memorable action of the 20th October took place.

On the other hand, those European Governments which do not agree on all points in the views of their Majesties the King of Great Britain, the King of France, and the Emperor of Russia in favour of Greece, may take occasion from this doubt, and from the things which appear to justify it, to involve the fate of Greece, in uncertainty for years to come. Of this every Greek who considers, will be convinced, that it is the most sacred duty of every citizen, without exception, to exert all his powers in this decisive moment, forever to secure to this country the enjoyment of that destiny, to which it has been summoned for these seven years by the wonders of Divine Providence.

Great as are the sacrifices which the Greeks have made, up to this day—great as is the distress into which the nation has fallen—Greece still possesses the power of unconquerable valour; of its generous sons, both by land and sea, it undoubtedly has among them, men who were always the richest proprietors and merchants, a class of citizens who have saved any remains of their property and of their credit, as well in the Province of the Morea and as on the continent of Greece.

Convinced of the noble sentiments of this class, I am confident that the patriotism of the Greeks will afford to the Greek Government the means of providing for a short time, ammunition & provisions for the army and the fleet, without other recompense for the moment and to receive, as well from the one (the richer Greeks) as from the others (the soldiers and sailors) the services which the deliverance of Greece requires. But as soon as the Greek Government shall have received the succour to be expected from the Allied Powers, and shall have duly regulated and enjoyed the receipt of the national revenue, it will hasten above all things, to discharge the two fold debt which it may now have contracted—First, it will discharge the arrears to pay the soldiers and sailors who will make this new campaign, merely for provisions and the necessary ammunition. Secondly, it will repay to the lenders the sums advanced, unless they themselves prefer to delay, and to receive regular interest.—The subjoined decree, No. 7, gives the requisite information respecting the plan proposed.

I have now only one remark to add. The interest that the whole Christian world has taken in Greece ever since the beginning of the present struggle—the benefits which Greece has received by the numerous contributions that have been raised in Europe to alleviate its sufferings—the wishes for its deliverance, give me the wellfounded hope that many opulent foreigners also will joyfully subscribe, in this decisive hour, to the Bank to be organized in the following manner:—

The President J. B. CAPO D'ISTRIA.

The Secretary of State L. TRIKUPI.

Egina, Feb. 14, 1828.

The following are the contents of the decree mentioned in the above proclamation:—

GREEK STATE.

The President of Greece having consulted the Panhellenium, and by its advice, decrees—

1. A bank shall be established.
2. The funds of this bank shall consist of the several sums which the shareholders shall deposit, and for which they shall receive eight per cent. per annum interest.
3. Those citizens who cannot take part in the Bank otherwise than by offering their articles of produce, which may be sold in foreign countries, will deliver such produce to the Directors of the bank, who will give them bonds to the amount of the value of the produce.
4. The sums entrusted to the Bank are to remain for one year.
5. After the lapse of that time, those that desire it have the right to withdraw their money, either wholly or in part. Only they must signify their intentions to the Directors of the Bank a month before.
6. After the establishment of the Bank, the bonds which the Directors will give to the subscribers, will be received without deduction in the purchase of the revenues of the state as securities, according to the Decree, on mortgages, to be hereafter issued; and lastly, in the purchase of national property, if the National Assembly, to be shortly convened, shall resolve on the alienation of a part of it.
7. The Probules of the section of Finance of the Panhellenium with two assistants appointed by the President, are Directors of the Bank.
8. A special Ordinance regulates the organization of the Bank and all the branches of its direction.

Egina, Feb. 14, 1828.

The President, J. A. CAPO D'ISTRIA.

The Secretary of State, L. TRIKUPI.

Hurricane in the East Indies.—A late English paper gives the details of a most destructive hurricane that visited the British Provinces in India, on the 6th and 7th of December. At Madras, it lasted thirty-six hours, during which time the rain fell in torrents; and the wind blew with the most tremendous violence. Bars and bolts, in exposed situations, offered but a feeble resistance; and most of the mansions on Choultry Plain, were very seriously damaged. The ships in the Roads rode out the first twenty-four hours in safety; but the hurricane increased with violence till the next morning, when it began to abate.—As day broke, attention was anxiously directed to the shipping, as it was feared that, if they parted in the night, they must have come on shore.—All the ships had disappeared, and hopes were entertained, for a brief space, that all had succeeded in getting to sea; but it was quickly ascertained that three vessels were wrecked at St. Thomas. Five others were afterwards reported to be in the same condition and some had not been heard of a fortnight since.—The news presented in the various compartments, gardens, & on the public roads, says the Madras Courier is indescribable. A week and ruin stared the passengers in the face at every turn; and the number of trees torn up by the roots, walls thrown down, and houses unroofed, is incalculable. A great many persons perished.—We fear, too, that many natives were drowned, or killed in the general ruin.

The storm was followed with the same or greater violence at Bombay. The walls of most of the compounds on the esplanade were

blown down, and several of the tents, after getting saturated with rain, fell upon the heads of their occupants, and contributed to the destruction of their property.—“The loss of lives,” says a Bombay paper, “has been truly awful; between three and four hundred persons, at least it is supposed, perished in or near the harbour. Forty of the bodies were washed ashore, and when the tide ebbed and left them exposed, a concourse of people assembled there, and many found in the drowned corpses a brother, a son, a father or a friend. It was really a melancholy scene. The sufferers were principally Burahs, proceeding to Surat with their families, to celebrate the wedding of their Moonsh, or high priest. A great number of pleasure and passage boats, huggals, (some heavy laden) dingies, &c. were driven on shore, dismantled or sunk, and the cargoes and stores damaged or totally lost.”

CHINA.—We have been favoured with advices from China and from the north of India, which concur in stating that the rebellion in Chinese Tartary has been suppressed by the arms and influence of China. The intelligence from the Himalaya rests upon the authority of letters from Shalkur, which state that the Chinese had completely beaten the Tartars, many of whom were actually fugitives in Lelidakh—a State, however, that is little likely to afford them an asylum, being itself under the powerful control, although not the absolute dominion, of China. The news from China is more detailed.

After three repeated defeats by the Chinese, the Tartars were unable to meet them to the field, although the leader, Chank-ke-urh, effected his escape, much to the dissatisfaction of his imperial Majesty. These successes were followed by the capture of Khoten, and finally of Yarkhend, when eleven leaders of the insurgents were put to death as victims to the spirits of the Chinese officers who had fallen in the course of the war. The imperial army had thence advanced to Cashghar, from which place accounts dated the 20th July state it was on its return, after leaving sufficient force to garrison the Mohammedan cities. The head of the insurrection had effected his retreat into some foreign territory, in a state of utter destitution, and deserted by all his followers. As a mark of the Emperor's generosity, he had remitted the annual contributions from the conquered cities, it is pretended, in consideration of the devastations of the war; but this act of liberality furnishes reason to suppose that traquillization of the Tartars has been effected as much by concession on the part of the Chinese government as by the valour of its troops.—The re-establishment of Chinese influence along the tract of country from the desert of Kobi to Cashghar, renews a barrier more insurmountable than the Peaks of the Himalaya, to the progress of civilization and commerce, which without such interposition, might, at no very distant period, bring into frequent contact the steppes of Tartary and plains of Hindustan.

We have lately been favored also with some notices of a visit made to the Pass of Oota Dhoora, on the Jawahir frontier, which had never been before visited by any Europeans. It lies on the road to Gertokh, the principal frontier mart, and about a day's march beyond Milam, the northernmost station of the Jawahir Boteas. Captain Hebert, the Superintendent of the Mineralogical Survey in the Himalaya, after having reached Milam, over a most difficult and dangerous route, was prevented from proceeding by indisposition; but his assistant, Captain Manson, advanced to the pass, which proved to be the loftiest yet visited, being 17,730 feet above the sea. Between this and Gertokh there are several ridges, of nearly equal elevation, to be crossed, and the whole is destitute of vegetation, the road being, for one march on this side of the Pass, more than 1000 feet above the line at which shrubs of any kind are found. The road is practicable only for about two months in the year: during the rest it is blocked up by snow. Notwithstanding the difficulties of the journey, however, the Pass is the most frequented, throughout the whole range, by the Tartar traders. It is computed that above 7,000 sheep, the only beasts of burden used in the Himalaya, pass over this mountain annually importing about nine or ten thousand maunds of salt and borax.

The rivers have continued to fall during the month of October, and by the 1st of November the decrease of the Bhagirathi was 6 feet 5 inches, that of the Jehughi 3 feet 8 inches, and that of the Matabhanga 10 feet 4 3/4 inches. The lowest depth of water in the first and last was 3 feet, and of the Jehughi 3 feet 9 inches: The Bhagirathi was navigable for boats drawing 2 1/2 feet of water, and was expected to continue open throughout November and December, for boats of two hundred maunds burden. Boats drawing 3 1/2 feet could pass through the Jehughi, and those of four hundred maunds would probably proceed by that river till March. The Matabhanga, which was navigable for boats drawing 2 1/2 feet will admit of the passage of those of two hundred and fifty maunds burden, probably till the beginning of February.

UPPER-CANADA.

KING'S BENCH.—TAR AND FEATHERING CASE.

[Continued from our last.]

JUDGE SHERWOOD said—

This is an action of trespass for an assault and battery, brought against the defendants. They have jointly pleaded the general issue. At the trial of the cause four of the witnesses called by the plaintiff, refused to be sworn, alledging for excuse, that they were accomplices and could not give evidence without criminating themselves. The plaintiff examined ten or twelve other witnesses, proceeded in the trial of the cause, and ultimately obtained a verdict against two of the defendants; and the other defendant was acquitted by the Jury. No evidence was offered at the trial by the defendants or any of them. The plaintiff has applied to the court for a new trial on the following grounds:

1st.—The Judge at nisi prius refused the plaintiff the reply to the jury.

2d.—The plaintiff lost important testimony from the contumacy of witnesses, in refusing to be sworn when required by the Judge.

The general practice at nisi prius, adopted in this Province, has long been established in England, in the following manner:—the plaintiff's counsel opens his case and calls his witnesses, and the defendant's counsel having done the like for his client, the plaintiff's counsel replies and makes his observations, on the whole case.—When the defendant's counsel calls no witnesses and produces no documentary testimony, the plaintiff has no reply. This is the general course where the pleadings are not special and I see nothing in the present case to take it out of these limits, as the defendants produced no kind of testimony at the trial. It was stated in the course of the argument at bar by the counsel for the plaintiff, that a case reported by Dowling and Ryland, and determined in the court of King's Bench, in England, makes some alteration in the practice at nisi prius, in this respect; but as these reports are not yet in the possession of either the bench or the bar in this Province, I am not aware whether the decision

alluded to, has any bearing on the case now before the court or not. Forming my opinion, therefore, on the information within my reach, I think the first ground which I have mentioned, as relied on by the plaintiff for a new trial, is not sustainable, and that the plaintiff's counsel, at the trial, had no right to the reply.—Peck's evidence, 5.—notes. The other ground in the motion for a new trial, on which the plaintiff relies, is,

“That the plaintiff lost important testimony from the contumacy of witnesses in refusing to be sworn, when required by the Judge.”

In the report of the evidence by the learned Judge before whom the cause was tried, appears the following remark made by himself on the refusal of Andrew Stevens to be sworn, “I will not commit him, the party having a remedy in case [“should be wrong; but if I ought to commit him till he is sworn, “the verdict may be set aside for breach of duty in the Judge.”

Andrew Stevens was subpoenaed to give evidence on the part of the plaintiff at the trial, and as the Judge on the refusal of the witness to be sworn, declined committing him, giving for reason “that if he ought to commit him the verdict might be set aside.” I think a new trial on the second ground stated in the plaintiff's motion should be granted under these circumstances, if on examination it appears there was, in truth, a breach of duty on the part of the Judge. There was clearly a sort of public pledge given to the plaintiff, that if the Judge were wrong in his conduct, a new trial would necessarily follow; and although I have reason to think that such a proceeding would form a perfect anomaly in the history of new trials, still it appears to me it would be right considering the unusual encouragement held out at the time. Another question then is, was the conduct of the learned Judge correct?

I feel myself very much relieved on this occasion in finding that I shall not be under the necessity of attempting an argument from first principles to arrive at a proper conclusion in this matter, for it seems to me that a case determined in Westminster Hall contains in effect the required decision on this point. I allude to the case of Doe ex dem. Supp. vs. Andrews, Cowper 845. In that case one Johnson, the Attorney for the defendant, was a subscribing witness to the agreement under which the ejectment was brought, & being present in court, at the trial, was duly served with a subpoena to give evidence on the part of the plaintiff. On being called as a witness, after the personal service of the writ of subpoena, he refused to give evidence, alleging that, as the Attorney for the defendant, he was not compellable to do so, and the plaintiff did not think it prudent to proceed without his testimony and was nonsuited. Afterwards an attachment against the witness was moved for in the Court of King's Bench for a contempt in refusing to give evidence after being served with a subpoena ticket at the trial.

Lord Mansfield in delivering the judgment of the court, among other observations made the following remarks:—“I think Mr. Serjeant Sayer who tried the cause would have been warranted in committing this man, but he has taken the more prudent method of leaving the matter to this court.”

Here then is the opinion of one of the most eminent and learned Judges which any country ever possessed on a question which I consider precisely analogous to the one now under consideration; and I feel myself bound on this authority to say, that the learned Judge who tried this cause acted prudently and correctly—and that there was no breach of duty on his part in not committing the witness Andrew Stevens. He left the whole matter to this court; and as Lord Mansfield said, “he took the more prudent method.” If the witness, [Stevens,] has been guilty of misconduct, this court out of which the subpoena issued has the full and undoubted power of punishing him, if they think proper on a due application for that purpose—or, the plaintiff may bring an action against him for refusing to give evidence if he has been legally subpoenaed. I think it unnecessary to express an opinion whether the Judge at nisi prius had authority to commit the witness or not; but I entertain no doubt that the course he pursued was the one generally adopted and approved of in England, on the trial of a civil action.

With respect to the other three witnesses who refused to be sworn, it appears by the affidavits filed on the part of the defendants, that these witnesses were not subpoenaed to give evidence at the trial of this cause. The counsel for the plaintiff contends, that all persons who are present in court are legally compellable to give evidence in any cause, which may then happen to be in course of trial; and as these witnesses were actually present in court, during the trial, they were necessarily under a legal obligation to be sworn as witnesses for either party, on being called for that purpose. This is a doctrine to which I cannot subscribe, because I see no authority in support of the position; but it appears to me the law is expressly the reverse. In 2nd. Bacon's Abridg. title EVIDENCE D. it is stated “that if a man who is not subpoenaed happen to be in court during trial, he shall not be bound to be sworn against his will, and in certain cases, the court will wait till a subpoena can be procured.”

In the case of Bowles vs. Johnson, Black, reports 37, in the King's Bench, a similar question came before that court, and it was determined “that a person not subpoenaed was to be looked upon as a stander by, and that it is no contempt of the court if he refuse to be sworn.”—I am, therefore, of the opinion, that no person, who is not subpoenaed, in a civil case, is bound by law to give evidence in such an action against his will, and that his refusing to do so is no contempt of this court nor of nisi prius, and that no attachment can lawfully issue against him, and that no action will lie for the recovery of damages on such refusal. The laches of the plaintiff in not procuring his witnesses should never have the effect of placing at his option the repudiation or retention of his own verdict, especially where one of the defendants has a verdict of acquittal.

When the plaintiff discovers that the evidence which he has in his power to give, at the trial, is not sufficient to sustain his action so well as he would wish. I think he should take a nonsuit conformably to the case before cited from Cowper 845. If he elects to proceed on the evidence adduced at the trial in proof of a joint trespass as this is, and one of the defendants be acquitted as in the case here, he cannot, in my opinion, obtain a new trial on the ground alone of the refusal of witnesses to give evidence; and this doctrine, I think, is in principle recognized in the case of Sir Charles Barington, reported in 31. Salk. 362. Parker et al vs. Godin, 2 Straun. 814. and Norris vs. Tyler, Cowper 37. Markham vs. Mid. 8% 1259.

These cases prove that, a co-defendant against whom a verdict has been rendered altogether contrary to evidence, cannot have a new trial when one defendant is acquitted, and it appears to me that, a plaintiff who does not pretend the verdict to be against evidence, has still less claim to a new trial.

In the present case the plaintiff has filed no affidavit to show that he himself believed the witnesses who refused to be sworn could give any material testimony in his favour against the defendant who was acquitted, or against either of the other defend-

"As we have seen a letter containing the statements alluded to, we must confess it does look rather ominous indeed. When any one here recalls to mind the absurdities of the *Montreal Petition*, drawn up in a style perfectly unique, he will agree that notwithstanding Mr. Gale's well known indifference to labor, he could have found little or no difficulty in drawing up a proper answer for Mr. Huskisson's information. The only difficulty would be to make his answer a serious one."

Very well; all is settled; and these are only preludes to the great Hymn of Victory. The Country is vanquished; after all this puffing and swelling it cannot be otherwise. All the offices and the little holes and corners will doubtless soon resound with *Te Deums*. The Mercury snuffs the victory with so much keenness, that he can no longer restrain his slang vocabulary.

The Mercury may be certain the country would not despair, even though Sir Francis Burton should not be the Governor; because the success of the Country in its just pursuit, its redress of injury and insult, does not depend on any one man. The Country will prevail, and such an administration as the present, which is about to expire amidst the shouts of the country, will never again appear. But the country does, nevertheless, eagerly desire Sir Francis Burton above all men, because they have had a taste of his virtue and wisdom. He was long a dispassionate observer of men and measures and has made himself intimately acquainted with the political history of the Province and the principles, projects and views which have engaged and agitated it. The habits of his life have informed him of the necessity for respecting the feelings, opinions and prejudices of men—and for making conciliation and not headstrong rudeness the means of conducting them. His liberal mind receives easily and embraces the spirit and maxims of a Constitutional Government. He has proved too clearly for the satisfaction of the adverse party, that he has firmness and a judgment clear and self-dependent. In fine, the country is conscious that under the protection of his just and generous nature, its good name will be unprofaned by slander both at home and abroad.

That Sir Francis Burton must feel proud of the respect entertained for him by the Mercury, it is impossible to doubt—especially when he recollects how the Mercury and the administration for which it wrote acted with regard to an injurious and "unauthorized use" of his respectable and honoured name in certain communications and messages.

The kindness of the Mercury is most conspicuous in the chagrin he manifests at the supposed neglect of the "radical agents" as he is pleased to term them. He may take comfort, however. Mr. Gale we believe has had something to answer—and it would appear that that something required a "strong and energetic" reply. There indeed were "specimens of business," and of business done too without waiting for the command of Mr. Huskisson—but ready cut and dry for Mr. Huskisson—and which Mr. Huskisson felt required a "strong and energetic" reply, which all the world knows no one is better qualified to give than Mr. Gale? Well might our Agents say, "there, answer that as well as you can"—and go amuse themselves, as a good chess player may take up a scene of a play to read while his discomfited adversary cracks his brain to save check mate.

But the Quebec Authority Gazette considers that the affair looks rather "ominous"—we confess it was rather "ominous" for Mr. Huskisson to require Mr. Gale to waste his fragrance on the desert air—to give one of his "energetic and vigorous replies," to a mass of absurdities—it was an exceedingly "ominous" injunction indeed on Mr. Gale to restrain the comicality of his genius, and assume a serious air in answering, as if on purpose to torment him by a malicious constraint. It is a pity the Official Editor was not sent over to perform the comical part—which no doubt, he would have executed to perfection—and happily counterbalanced the "ominous"—as it is, however, the "ominous" prevails.

We have already introduced to our readers an exquisite writer, in the New York Tribune, under the title of *A Briton*—his third number has been copied into the Mercury—and so highly prized by that paper, that it has composed on it a series of learned notes. We lament we have not room, either for the exquisite text or notes. We will briefly state its noble principles and its admirable conclusion.

1—The Provinces have not the materials necessary to constitute a deliberative Body for the purposes of legislation—containing as they do, only choppers of wood, industrious farmers, and acute shop-keepers.

2—Colonies should not be endowed with legislative powers at all.

3—Conclusion:—That no Bill or Law should bind the Colonies that was not deliberated on, and approved by its legislators, in Provincial Parliament assembled!

This able treatise, however, contains some good things.

Detachments of the 15th, 66th, 68th and 79th Regiments, were under orders to embark from Cork for Canada.

The Montreal Official Gazette of 2d inst. makes the following observation: "In the most positive terms we deny that the Earl of Dalhousie is recalled from this Government—his conduct has been entirely approved by the British Ministry, and he enjoys the unlimited confidence of the Sovereign."

Thus it appears that Mr. Huskisson and the rest of the Ministry first approved and then called on Mr. Gale for a defence!—This is a most "ominous" way of proceeding.

The Montreal official Gazette calls on us to testify as to the truth or falsehood of a report which he details. We would not touch that charming report for the whole world.

The first Battalion of Montreal Militia paraded according to the provisions of the Militia Ordinances alleged by some to be in force, on the Champ de Mars, on Friday evening last.

A melancholy accident took place at the Current St. Mary on Saturday evening. A quantity of plank and boards had been piled for the purpose of seasoning, in the rear of the house of Mr. Jos. T. Gaudet. Some children were amusing themselves near them, when by a sudden gust of wind they were overturned, covering three of the children. One child aged about ten years, the head of which was completely crushed, was dead ere he could be extricated—a second had his head bruised and leg broken—and the third was slightly injured.—*Mont. Auth. Gaz.*

The Bowery Theatre at New-York and adjacent buildings were on Monday evening destroyed by fire, making, as the New York Journals say, one of the greatest conflagrations witnessed in that city for years. Another large fire took place the succeeding evening. They are supposed to be the work of a gang of incendiaries.

A violent storm occurred at Quebec on Thursday morning last, which caused a considerable damage to the wharves about the city, and destroyed several booms for the protection of timber, great quantities of which were swept away. The shipping

also have been much injured. We shall give the particulars in our next, for which we have not room in this evening's paper.

The Tariff Bill has passed the American Congress, and is now Law. The duties on various English Manufactures are increased by it. It is predicted that smuggling from this Province will be greatly increased by this Bill; if so, smuggling into the Province, will also be increased.

The following is taken from the Portland Advertiser in the State of Maine—20th May.

OUR NORTH-EASTERN BOUNDARY.

Messrs. GALLATIN and PREBLE are appointed Agents. The nomination of the latter gentleman might, perhaps, by some, be considered as, in similar cases, an act of unusual magnanimity, when it is recollected that at the last Presidential canvass in this State, he stood in an attitude not particularly friendly to the election of the person by whom he is now selected for so important a trust. We mention this, not with the least view of giving censure, for we believe the appointment will, as it ought, give general satisfaction;—but we take the occasion to allude to it as one, among other evidences, that our President is so far elevated above partiality and prejudice, as to look with a single eye to the public good, whenever duty and conscience may require him to act. Judge Preble is a man of great energy of character, fully informed as to the subject in controversy, and abundantly able to enforce our claims to the extent of our rights.

NEW-YORK, (Tuesday,) May 21st.

It is stated in letters on the North Eastern Boundary subject, that in the reciprocal appointment of new agents to fix the boundary line, an understanding exists between the United States and Great Britain, that it now can be permanently and satisfactorily run, without the intervention of a third power; and likewise, that the understanding extends to the employment of a small force on each side of the disputed territory, for the sole purpose of preventing the repetition of transactions on either part which might embarrass the negotiation. There will not be a wide space between the posts of the two nations; but we hope that a friendly and hospitable intercourse are on foot. The territory in controversy is large and valuable. The subject, it is known, has been an object of solicitude of the President for many months; and all who know any thing respecting it, will readily perceive that arrangements for an amicable settlement of such a controversy could no be made without the intervention of a long term of time; but it is now believed that the arrangements are in a fair way of an early and satisfactory issue.—(*Boston Centinel*)

NATURAL HISTORY SOCIETY.

The monthly meeting of this Society, was held last Monday evening, at 8th o'clock, the Honorable CHIEF JUSTICE REID, in the Chair. Dr. HOLMES, as Chairman of the late Committee of Management read the Annual Report of the Society, detailing its proceedings since its establishment. Mr. ROBERT ARMOUR, Junr. Secretary of the Indian Committee, in the absence of Lieut. Col. WM. M'KAY, the Chairman, read the first Report of that Committee. These reports were severally approved of and ordered to be published under the direction of the Council. We shall give them both at full length. The monthly report of the Council stated that the donations to the Museum were 2 birds by Dr. Brown, 2 by Major Coffin, R. A. 1 by Sewell Esq. and 1 by Lieut. Trotter, R. A.; 6 minerals from the U. States by Dr. A. W. Robinson of St. Vincent de Paul, 4 from the U. States, by H. H. Cunningham Esq.; a green snake by Major Coffin, R. A.; a box containing 110 dried plants from the vicinity of Quebec, by Wm. Sheppard Esq. of Woodfield; a box of minerals and organic remains from Dr. Fraser of Murray Bay; a lamprey found in the water pipes of this city, by Dr. Roberson and a specimen of Breccia marble from the Alps by a friend unknown.

The donations to the Library were 5 volumes by Dr. Stephenson, 11 by Alexander Skakel Esq. 1 Dr. Campbell, 7 by Dr. F. Arnoldi, 4 by Dr. Loedel, 1 by Dr. Diehl, 1 by Dr. Berthelet 6 by Dr. Holmes, and 1 by Mr. H. Corse. Dr. Bee of Albany, had also transmitted a copy of the annual address delivered by him before the Medical Society of New York, and Mr. Lea of Philadelphia, a copy of his paper on shells read before the American Philosophical Society.

It is announced to the members present, that during the ensuing winter at the society's request, lectures on the following subjects would be delivered under its patronage.

Mineralogy and Geology by A. F. HOLMES, M. D.
Natural Philosophy, A. SKAKEL, A. M.
Zoology, F. W. PORTER, M. D.
Comparative Anatomy, J. STEPHENSON, M. D.

Letters were read from A. Stuart, and Wm. Sheppard, Esqs. and Capt. Bayfield R. N. of Quebec, Dr. J. Coldstream of Leith and Dr. W. Fraser of Murray Bay, thanking the Society, for being elected corresponding members. A Committee of 5 members were appointed to superintend the Library, and to purchase such works as they may deem necessary. Seven corresponding, and one honorary member were elected and several proposed.

Dr. Holmes read an account of a visit made in 1822, to the Falls of Chateaugay and Grande Mer, on the Black or St Maurice River. The Society then adjourned.

For the CANADIAN SPECTATOR.

MR. EDITOR,—By the following Obituary it would appear that in France persons of the Israelitish persuasion enjoy all the honours bestowed on them according to their respective merits.

As to the British Government they find it convenient to send a person of that persuasion to examine and report the state of the Corn Trade on the continent—they have recourse to persons of that persuasion for any financial difficulties—they accredit foreign Envoys of that persuasion—they grant Commissions in the Civil, Military and Naval Departments—persons of that persuasion are frequently elected to seats in the British House of Commons.

Three Rivers, 29 May, 1828.

From a New York Paper of 23d May.

The following justly merited tribute of an estimable man is copied from the Constitutionnel of the 14th April last. "The manufacturing community of France has lost one of its most honorable members, the Israelitish of Paris, one of their highest ornaments—BARUCH WEIL, Knight of the Legion of Honour, manufacturer of Porcelain and Vice President of the Consistory of Paris, died on the evening of the 8th April, aged 43 years. The whole body of the Jewish population of Paris, and a crowd of the most distinguished persons of other sects attended the mortal remains of this excellent man to his final abode—this unlooked for calamity has inflicted the most profound sorrow on his numerous family and friends.

From the Quebec Gazette.

The inhabitants of Lower Canada are attached to Sir Francis Burton. After many years of differences on public questions which involved their rights and divided society, he took the government, and peace and confidence attended. Naturally confident and generous, the esteem and affection of the country, are quickly gained and long and warmly felt. It has been seen, since Sir Francis's departure, all the advantages of his presence; For his personal welfare it feels a zealous interest because he is its friend.

It is the public conduct of Sir Francis Burton that has particularly endeared him to the country. Its rights and its character were assailed and infringed; his administration healed up the wounds. He never chose to doubt the loyalty of the Assembly, and to upbraid the country as led by a "seditional faction;" he may have felt that it was to that "faction" that England owed every inch of ground she retains on this continent; that the same "faction" twice sacrificed its persons and property for a loyalty often sneered at, by those who ought to tell us what stake they have in the country; He never countenanced a host of prejudiced and paid writers, to blacken the country and traduce it in the opinion of the King and our fellow subjects. For this, which Sir Francis did not do, the country are grateful. To some of the acts of his administration, the country is wedded, for they involve the principles of the British Constitution, common to every Englishman. Every attempt to encroach or subvert these principles, the country will repel, and sooner or later it will prevail and they will be established.

MARRIED.

At Ste Genevieve, on Tuesday, the 31 instant, by the Rev. Mr. Jean Olivier Bruneau, curé of Verchères. A. T. KIMBER, Esq. Notary of this city, to Miss MARIE ANASTASIE, daughter of A. Berthelet, Esq. of Ste. Genevieve.

AUCTION SALES.

BY J. A. CARTIER.

At his office on SATURDAY next, the 7th inst. will be sold.

A General assortment of DRY GOODS Just received. Sale at ONE o'clock.

June 4th 1828.

J. A. CARTIER, A. & B.

BY AUSTIN CUVILLIER.

At his Office on MONDAY next and following days each day at ONE o'clock will be sold

A large quantity of Household Furniture and other articles.

AFTER WHICH

A large assortment of DRY GOODS well adapted for the season. 31st May 1828. AUSTIN CUVILLIER, A. & B.

GOVERNMENT CONTRACT.—Tenders will be received at this Office till the 14th June next, for to repair the Plaster and Whitewash the Officers and Men's BARRACKS, Passages, Kitchens, Cook Houses, Guard Houses, and Cells at Montreal and St. Helens, also to repair and paint six Sentry Boxes for the use of this Garrison. Specifications to be seen at the Royal Engineer office at Montreal.

Deputy Comy. Gen's Office, Montreal, 26th May, 1828.

The Subscriber Offers for Sale.

1500 BARRELS of Upper Canada Fine and Superfine Flour. JULES QUESNEL.

Montreal, 4th June, 1828. —4wks.

GENERAL SHIP FOR LONDON.—To sail about the 20th instant, the A. I. Ship ENDEAVOUR, COLLINGSON, Master, now discharging her inward cargo at Quebec, will be laid on for the above Port, and having part of her cargo engaged will meet with every dispatch. For particulars apply to FRR. ANT. LAROQUE.

Montreal, 3 June, 1828.—en.

Office of the Surveyor of Roads and Bridges of the City and Parish of Montreal.

May 29th, 1828.

NOTICE.—Tenders will be received from Masons and Carpenters for constructing two or more BRIDGES over the Little River in rear of the Town, to be sent in on or before FRIDAY the SIXTH of JUNE next.

—ALSO—

Tenders for laying the Chain Stones, paving the Gutters and Macadamizing St. Joseph Street, St. Joseph Suburbs South of the Bridge Prudhomme—and for Macadamizing Notre Dame Street from the Bonsecours to the Fourth line of Latrux Streets. Specifications of the above Works will be seen and further particulars known by application at the office of the SURVEYOR OF ROADS.

J. VIGER.

Surveyor of Roads.

OLL CLOTHS for COVERING BOATS & CANOES, all ready made, for Sale by J. B. CHALIFOUX.

Montreal, 27th May, 1828.—i.

NOTICE.—The Subscriber begs leave to inform his friends and the public in general that he has rented the house in St. Vincent Street, formerly occupied by the late F. W. Ermatinger, Esq. where he hopes, by a strict attention to the business of his profession, to merit a share of the public confidence and support.

A. T. KIMBER.

NOTARY PUBLIC.

Montreal, 3d May 1828.

JOHN BROWN, WHOLESALE AND RETAIL BRUSH MAKER, FACTURER, No. 6, St. Francois Xavier Street, begs leave to inform the Public, that he has on hand a great variety of every description in the above line—which he will dispose of on the most reasonable terms.

Montreal, May 21, 1828.—um.

JOB PRINTING, neatly done at this Office at moderate prices.