

wholly to have lost sight of the respect due to the character of His Majesty's Representative, he has over looked the character of his own Office, he has deliberately and solely contrary to his Oath, created a Plaintiff and Defendant in a cause where he himself was the only party concerned he has made a mockery of the solemn forms of Justice for the gratification of his private feelings, and finally he has had the temerity to enter upon the records of the Court in which he presides the institution and issue of a process which had no legal existence.

The Judicature Law has given to the Judge in certain cases a discretionary power, and so far this Law has clothed him with an authority of ten liable to abuse. From an executor of law, it has in some sort transformed him into a law maker, and accordingly we have seen that in the many cases he has assumed that character but in the great er latitude of this discretion can there be the shadow of a plea for dragging an individual into Court as a Plaintiff in a civil action, and compelling him to assume that character against his will. Nothing in this discretion, by any sophirtey or perversion of language can be construed to warrant so gross a violation of the rights of a British Subject.

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It is impossible that any controversy can arise upon this case if the Chief Justice did really conceive that he was sanctioned by the laws in forming this mock trial, than it follows that he is disqualified for so important an Office by an evident want of judgment in a matter that the most ordinary understanding would hardly mistake on the other hand, if with a perfect knowledge that he was acting illegally and unconstitutionally he has thus trampled upon the rights of a subject, the fair conclusion is that he is defective in the upright character of a Judge.

In deed we have only to beg your Excellency's reference to the records of the Court, kept by himself in this and other instances, to shew how regardless he has been of truth and impartiality. In support of the second head we state the following facts.

In or about the 25th. July last, Frederick Thompson, Surgeon to the Forces in Newfoundland quitting this Island left debts unsatisfied to a considerable amount, Two Writs were issued against his effects, which were attached; and the Supreme Court very properly refused to grant further process, directing the High Sheriff to make no partial payments.

An attempt was made by two

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of Thomsons friends to obtain the consent of his creditors to withdraw their claims from the Supreme Court, and dispose of the property in the custody of the Sheriff for the general benefit of the claimants.

This consent was urged by the Chief Justice by a very singular kind of argument, but the by no means a novelty in his practice if your accounts said he to one of the creditors present come before me, I shall strike out of the every item for Wines and other Liquors you had therefore better agree to take this business out of the hands of the Court.

The only reason assigned for excluding Wine and Liquors was that such things might do harm.

The consent of Thomsons Creditors not being obtained to the measure proposed, the Chief Justice thought proper to order George Lilly, Auctioneer, to sell the effects in the then custody of the Sheriff and hold the monies subject to his future direction.

The Auctioneer literally obeyed this order, and commenced the sale of the effects in question without the knowledge or consent of the Sheriff.

In the course of some days after this transation notwithstanding the remonstrance of the Sheriff George Lilly as we presumed by order of the Chief Justice, publickly advertised a distribution of the property. Here the Chief Justice has attempted

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to apologize for what he terms a mistake, but it is evident to common sense that this shallow subterfuge is no more than an attempt to parry off the charge of illegal conduct in not complying with the Act by calling together Thompsons Creditors.

The Law in the case of Thompson is so very clear that no man not previously disposed to misconstruction can possible mistake it. Yet the Chief Justice has discovered that Thompson is not legally insolvent, he not being engaged in Trade.

There are nevertheless precedents to be found upon the records of his own Court where insolvency has been pronounced under similar circumstances. To the case of Thompson the Judicature Act fully applies, and in any other hands would be strongly recommended to avoid unnecessary expences.

What Sir, must be the fate of the pure administration of Justice in the hands of a Judge who thus acts, in violation of the very law that ought to be his guide, and who without any cause snatches property under attachment from the custody of the High Sheriff, an authorized agent to the public.

It is really astonishing and worthy of remark that the Chief Justice of Newfoundland

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should should without Writ, or any other legal document, direct George Lilly to take into custody the property of a subject, and sell it by public Auction and after that is done, to issue Writs to attach the proceeds in Lilly's hands. There can be no reasonable cause assigned for such illegal conduct, but a disposition to make his will a Law, and to transfer from the present Sheriff to a mere favored individual the pecuniary advantages arising from such cases.

In our former complaint we noticed an improper application of the effects of two unfortunate men, fifty guineas of whose property was paid by order of the Chief Justice to Mr Lilly, the person favored in this case, for a very trifling service, and which service was actually performed by another for two Guineas only. We beg upon the present occasion to call your Excellency's attention to this circumstance.

The third and last charge is of a nature not to admit of positive proof, but which is supported by such powerful presumptive testimony that no doubt of it can rest upon an unprejudiced mind.

The late John Street of this place had exhibited a bond in the Supreme Court given to him for five thousand pounds by his Brother Mark in

England,

England, and unquestionably it was upon this Bond, principally, that John obtained letters of administration to Marks effects in Newfoundland.

The Bond was deemed by the Chief Justice to be so essential a document in this administration which he himself had advised, that he copied it into the records of the Probate Court with his own hand, with all the necessary testimony to prove the genuineness of the original instrument.

It is at least highly improbable that the recollection of so recent and important an official transaction could have escaped the Chief Justice in the lapse of a few months.

The Trustees to the Estate of Mark Street in England, after the Death of John Street, who was lost at Sea, and who carried the bond with him, appointed an Attorney in Newfoundland to administer a second time to Marks effects, and to demand from John's representation the money in their hands, which amounted to upwards of three thousand pounds.

John Street administered to Marks Estate with no other view than to obtain payment of his bond and the second administration seems to have for its object to invest the money so held, and to carry

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it to the general account under a new Law. A Writ for that purpose was taken by the second Administrator, in the Supreme Court, and the day for trying the action appointed. The original bond being lost with John Street, the authenticated copy in the Probate Court became the only testimony by which the claim set up by John Street representatives could be proved.

The Chief Justice though blessed with a very excellent memory had entirely forgotten what he had recorded with his own hand but a few months before.

He had even forgotten that he had written such an instrument the bond could not be found. Every Book it was said, in the Probate Court was searched in vain, till two days before the trial.

At length it was discovered thro' the medium of Mr Broom, Notary Public in what book this lost bond was to be found, and it is worthy of observation that the book in question was the only Official Record not produced on this occasion.

Two days before the trial, this circumstance reached the knowledge of the late Sheriff H. Phillips who informed the Chief Justice of it, and the book was then and not till then produced.

To detach guilt from this transaction is morally impossible and we will take upon us to say

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that your Excellency, by an examination of all the parties interested in it, will see reason to believe that the instrument in question was not accidentally but intentionally concealed.

It is essential to the Character of a Judge not only to be pure, but to be above suspicion. We shall not go into any reasons for the conduct of the Chief Justice on this occasion.

We only state the facts it has been the practice of the Probate Court to grant letters of administration to much greater amount than the effects of the deceased; It certainly is but common to enquire into the reason of this practice it is well known that Mr George Lilly has been officially employed from time to time by the Chief Justice in the Admiralty Court business for which he has never received any remuneration; and there is very reason to suppose that the Chief Justice has adopted this mode of increasing the Probate Court Fees, for the same end as we have alledged in a former statement, where he was so extremely prodigal of the effects of the unfortunate Reardons.

We dont state this as a regular head of complaint, but we see it expedient to urge to your Excellency the propriety of extending the enquiry

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into the subject of the Probate Court, and of examine such evidences in support of our suspicions as we may be able to produce in the course of this investigation.

In order that your Excellency may the better be enabled to judge of the grounds upon which the foregoing charges rest, as well as those contained in the representation communicated to the late Governor we beg that your Excellency may institute an enquiry by the testimony of evidences on the spot .

The Chief Justice will then have an opportunity of replying to his accusers in the proper place.

We conceive it fair to conclude that His Majesty's Ministers through some channel unknown to us have been satisfied that our former complaint was unfounded; or they certainly would have instructed your Excellency on the subject.

We shall hope that they will on your Excellency's return to London be satisfied of the going farther, and render it unnecessary for us to carry our complaints to another quarter, a measure we shall immediately prepare ourselves for and we solicit your Excellency to use every constitutional means to obtain the removal from the high and important Office of Chief

Justice

Justice of a Man manifestly not possessing the requisites  
essential to the character of a Judge.

I am &c.

(sd) J. Macbraire.

Stn. Knight.

R. Hutton. Committee.

John Dunscomb.

Pat. Huie.

As Excellency the Governor.

&c.

&c.