

NOVA SCOTIAN "SPARKS OF LIBERTY"

MARGARET ELLS

"Sparks of Liberty at Halifax"

The spirited Conduct and Debates of the Halifax House of Representatives in opposing Measures of His Majesty's Council, we offer to our Readers, as we are persuaded that the Spirit of Liberty, wherever breathed, is agreeable to the Citizens of these States.

ON the thirteenth of May, 1790, the above quotation appeared in a Boston newspaper. There followed an extract from the Journal of the Nova Scotia Assembly for the twenty-seventh of March of the same year.¹ It was the representative branch of the sixth Nova Scotia Assembly that was credited with this "Spirit of Liberty". This House, the first Nova Scotian legislature in which the United Empire Loyalists were represented, had been elected in 1785 and was now in its fifth session. The previous four had witnessed a gradually increasing hostility between House and Council, which reached a climax in 1790. The debates that called forth the Boston editor's comment were those on impeaching the puisne judges of the Supreme Court and on rejecting the Council's claims of power to amend money bills. Fearful of the republican tendencies which the Boston commentator saw in the Assembly's conduct, a reactionary Haligonian published the quotation in a Halifax newspaper as a warning. In doing so, under the name of *Observer*, he expressed the hope "that in our future Deliberations, what now appears to the Boston Printer as the Sparks of Liberty may be extinguished by a Coalition of Interest, in promoting Peace and Concord thro' the Province, by which, under the fostering Hand of the Mother Country, we can only be a happy People."

It seems not to have struck the Bostonian as anomalous that he should be discerning sparks of liberty in a province whose population had lately become more than half loyalist. Perhaps, in his eagerness to find palatable food for his republican readers, he forgot the incompatibility between "liberty" and loyalism. During the early days of the revolution Bostonians had needed only the slightest pretext to find liberty brethren. Thus they had hailed

1. Public Archives of N. S., *Royal Gazette*, 22 June, 1790, Letter from *Observer* quoting the Boston paper.

Smith and Fillis, two Halifax merchants who had favoured refusing a cargo of tea in 1774, as "heroes of the revolution".¹ In 1790, too, the wish may have been father to the thought. It is clear that a controversy over constitutional rights was being waged in the province both in and out of the legislature, but it is doubtful whether there were republican implications. Apart from that question, it is interesting, in view of the province's twenty thousand loyalist inhabitants, that the House was disputing the acts and claims of the upholders of the royal prerogative; the fact may, indeed, be completely at variance with the ideas of people who think "loyalist" and "conservative" are synonyms.

The explanation of this anomaly may lie in the personnel of the legislature: perhaps the loyalists were too few to have any influence. A study of the members and their activities does show that they were too few to be representative, but it does not lead to the conclusion that they were ineffectual. Through the seven years during which the Assembly sat, the proportion of loyalists to pre-loyalists was slightly less than one to two.² Since there were at least as many loyalist as pre-loyalist inhabitants, the proportion was obviously unfair. In spite of their small number, however, the loyalists early made their presence felt. A prominent loyalist was Speaker for the first three sessions, and the activity of his fellow-loyalists, on the floor and in committee, increased with each succeeding session until in 1789 it equalled that of the pre-loyalists. In that session, although holding not a third of the seats, eight out of 31, the loyalists supplied forty per-cent of committee members and moved 56 percent of the successful resolutions and bills. In 1790, with nine members as against twenty-two non-loyalists, they carried as many resolutions and served on as many committees, while in five of the seven divisions the loyalists cast the deciding vote. Thereafter they dominated the House.³ If, then, the House in 1790 was guilty of insubordination to the Council, loyalists were at least as responsible as old inhabitants. By turning to the events themselves, the possibility and degree of guilt may be determined.

Events of the two previous sessions anticipated the dénouement of 1790. Certain tendencies, notably the zeal of the House for reform, had been present since the members first met. The first

1. Kerr. W. B.: *N. S. and the American Revolution*, Canadian Historical Review, Vol.13, p. 31.

2. On a basis of 39 members constituting a full House, 26 were old inhabitants and 13 were loyalists. An average was taken, since there was never a full House. The attendance ranged from 31 to 37. The actual numbers were: loyalists; 10, 12, 11, 8, 9, 9, 9, average 9.8; pre-loyalists; 25, 22, 22, 25, 22, 24, 25, average 23.57.

3. Journals for 1789, 90, 91; see my analyses of votes, motions and conferences for these years in the Public Archives of Nova Scotia.

three sessions had been characterized by measures of reform and of economic and social improvement. The reforming measures included enquiries into the fees demanded by provincial officials, the expenditure of public grants, the collection of the revenue and even the conduct and functions of the Naval and Customs Officers. As a result of these enquiries, laws changing the tables of fees¹ and providing for more efficient expenditure of the road grants² were passed, and pressure was brought to bear successfully on the Governor to dismiss a deputy Naval Officer found guilty of breach of duty,³ and to "appoint faithful and active officers" to collect the revenue duties⁴ in four townships. The success of these early efforts must be reckoned as a strong incitement to further action of the same kind. Their achievements in economic and social improvement had a similar effect. The most outstanding of these were the stimulation of ship-and mill-building, the establishment of a very productive whale fishery, and the erecting of a lighthouse at the entrance of Shelburne Harbour and the founding of an academy and college at Windsor. Bounties were offered for the production of hemp, potash, flaxseed and manufactured iron, but were not successful. The absorption of the House during the first sessions in industrial improvements, educational advance, and, above all in internal reform, with a suggestion of bringing to book delinquent officials, was an accurate forecast of the next five years.

The interests of the House throughout the sessions remained unaltered, except in degree. In temper, on the other hand, it changed radically. In spite of slight differences of opinion, the relations between House and Council, up to the prorogation in 1787, had been good. There was no session in 1788. From the House's opening, amid much controversy, in 1789, to its close in 1790, their relations went from bad to worse. The reason for the change lies in an event of the 1787 session, when Col. Millidge, loyalist member for Digby township, brought into question the administration of law in the province. Millidge moved that "dissatisfactions having prevailed in the province relative to the Administration of Justice in the Supreme Court", the House go into committee on an investigation of the facts.⁵ In spite of the serious implications of the motion, and its unanimous support by the House, there was no

1. MSS Acts Public Archives of N. S. 17 George 111 cap. xv

2. 1787 Journal p. 58

3. 1785 Journal p. 37. Jonathan Binney, deputy Naval Officer, revenue collector and Supt. of Trade at Canso, was found guilty of having issued passes to American vessels. Binney memorialised the Sec'y of State, who referred his case to Gov-Gen'l Dorchester, who in 1792 cleared him.

4. 1785 Journal pp. 56, 7. Parr complied in four cases out of seven, as shown by the Commission Books, Vol. 170 in Public Archives of N. S.

5. 1787 Journal p. 36.

immediate rupture with the Council. The House addressed the Governor in the following words:

Complaints have been laid before us of the improper and irregular Administration in Office of His Majesty's Justices of the Supreme Court, the proofs of which, as they have been offered to us, we beg leave to submit to your Excellency and *to request you will be pleased to institute an enquiry into their conduct, in such a manner that a fair and impartial Investigation may take place*, that the public may be fully satisfied of their Innocence or Criminality, and that they themselves may be satisfied in what they have an undoubted right to expect, a trial by their Peers.¹

In reply the Governor, remarking that "many of the Charges are matters of legal Opinion in which the Judges and some of the Practitioners have differed", declared his opinion that the "Insinuations of a more Criminal Nature. . . . appear to be entirely void of foundation" and his belief "that no Charge of Partiality or Corruption in Office can in any degree be imputed to them." He nevertheless assured the House that the whole matter would be "fully considered in such a Way as to do ample Justice to all Concerned."²

The legal establishment of the province consisted of a Chief Justice and two puisne or junior Justices, besides the Crown lawyers. The Chief Justice, who ranked second only to the Lieutenant-Governor in authority, was salaried by the Home Government, but the two judges, though appointed by the Crown, were paid by the local legislature. All three held office during the King's pleasure and their residence in the province. In 1782 a provincial Act providing that the judges should hold office during good behaviour had been disallowed.³ By 1787 the conditions of the Bench were far from ideal. Chief Justice Finucane had died in August, 1785, and no one had as yet been appointed to take his place. The senior of the puisne Justices, Isaac Deschamps, was Acting Chief Justice. According to the law of the province two judges constituted a court; if both judges had to go on circuits twice a year, holding courts in six or seven townships as far apart as Cumberland, Windsor and Shelburne, their stay at each must have been short. On Deschamps and James Brenton, a New England lawyer who came to Nova Scotia as a loyal refugee before 1776, fell the work that would have been heavy for three persons. Although Brenton was a trained lawyer, Deschamps owed his legal knowledge merely to his experience as clerk and justice of the provincial courts. Since

1. *Ibid.* pp. 40, 41. Italics are mine.

2. 1787 Journal pp. 64, 65.

3. MSS. Acts, 22 Geo. III cap. xiv. See 1783 Journal, p. 4.

1783 Deschamps had been a member of His Majesty's Council. The opinion was given in government circles in England, after Shelburne and Sydney counties had been erected, that "it is rendered impossible that as the Bench now is, Justice can be administered."¹

The Governor's reply to the Assembly's address indicated that the executive was not in favour of investigating the judges' conduct. His certainty that there were no grounds for accusing them of partiality and ignorance was probably shared by the whole Council. Since Deschamps himself and Brenton's brother-in-law Halliburton sat in it, the Council could hardly be free from prejudice. Moreover, they resented having their administration repeatedly attacked by the House, and particularly the investigation which had led to the dismissal, in 1785, of one of their members, Jonathan Binney. They were not likely to favour further enquiries, much less one that reflected discredit on the conduct of judges. To call into question the execution of law was obviously to strike at the very roots of the administration. Shortly after the Governor had promised to take the judges' conduct into consideration, the session came to the end.

Much water had flowed under the bridge before the House met again. During the recess of a year and a quarter the judges' "case" had become an election platform in Halifax, and a *cause célèbre* in the province. Early in 1788 Attorney-General Blowers resigned the Speakership of the House to become the first loyalist member of the Council. An election to fill the Halifax County seat which Blowers vacated was held late in February. Charles, son of Charles Morris, the Surveyor-General of Lands, who was a Councillor and pre-loyalist, was one candidate; opposing him was Jonathan Sterns, a loyalist who had been the leading witness against the judges in the Assembly's enquiry. The election was conducted with considerable spirit, and not without bloodshed. At its close Morris, victorious by a good majority, "was carried in triumph. . . . through all the principal streets of the town, surrounded by an immense concourse of people, who filled the air with their repeated acclamations of joy."² Halifax apparently stood behind the Council and the judges.

Shortly after the election the council took into consideration the Assembly's address with regard to the judges, and, "to prevent" as they said, "as far as can be now done the Mischievous tendency of the Accusation, and in vindication of the character of the Justices of the said Court" they ordered "that an Extract of the proceedings

1. Public Record Office, Colonial Office correspondence, Series 217, Vol. 58 p. 428, Official papers, writers unknown.

2. Quoted from a Halifax paper by Beamish Murdoch: *History of N. S.* Vol. III, p. 59.

of the Council on this Subject be published in the next Halifax Gazette."¹ The Council meeting was attended by all the members who regularly sat in it, except Deschamps. Having considered the Assembly's address and "the allegations which accompanied it and the Answers of the Justices thereto" they agreed unanimously . . . "that the Allegations made by the Attornies in the House of Assembly against the conduct in office of the Justices of the Supreme Court are groundless and scandalous, and that the Justices of the said Court have by their Answer thereto fully acquitted themselves of all imputation of Malconduct in Office."² The publication of so sweeping a declaration was a rebuff to the House which had undertaken the enquiry, and more particularly to the attornies whose "allegations" were declared groundless. Smarting under his recent defeat at the polls, Sterns now showed his resentment by publishing, jointly with Wm. Taylor, the other attorney who had given evidence before the House, letters attacking the judges and the executive for their behaviour relative to the enquiry. On the first of April the Supreme Court met. When questioned by the Acting Chief Justice, Sterns and Taylor acknowledged authorship of the letters, and for this contempt of court Deschamps struck their names off the roll of attorneys. Sterns and Taylor would not concede that he was within his rights in so doing, and, swearing vengeance, they set sail for England to lay their case before the Powers That Were.

Sterns and Taylor remained in England for a year, until the Secretary of State convinced them that, whatever the merits of the larger question of the judges' administration of the law, their publications had warranted Deschamps's action. They could be restored to their practices only if they apologised and were accepted for readmission by the Court.³ Meanwhile a new Chief Justice had come and gone in Nova Scotia, and the House had met. In August, 1788, Jeremy Pemberton, one of the Commissioners sent out from England to receive loyalist claims, was sworn in as Chief Justice. Lieut-Governor Parr expressed himself as "very happy", on receiving the announcement of Pemberton's appointment, saying: "if we had had a Chief Justice some time ago, this affair of the Puisne Judges would not have happened."⁴ Since Pemberton had been in the British North American colonies at intervals since 1785, in his capacity as commissioner, his appointment as Chief Justice appears to have been an emergency measure to cope

1. Public Archives of N. S. (hereafter P. A. N. S.) Vol. 213 p. 140, Minutes of Council, 28 Feb. 1788.

2. P. A. N. S. Vol. 213 p. 139 Council Minutes.

3. Public Record Office. C. O. 217/60 pp. 418-479, Correspondence with Sec'y of Stat relating to the judges' case. Canadian Archives Report for 1894 p. 455, Opinion of Sec'y o State Redisbarring Sterns and Taylor.

4. Public Record Office, C. O. 217/60, Parr to Nepean, 5 May 1788.

with the issues raised by the House. Whatever its cause, its effect was short-lived, for Pemberton left in November and resigned his office the next Spring, and the province remained without a Chief Justice until May of 1790.

Although the Council's treatment of the Assembly's request for an enquiry into the judges' conduct had been published a year before, the House, when it met in March 1789, had yet to make an official pronouncement with regard to it. Thirty-three members attended, and elected Solicitor-General Uniacke to succeed Blowers as Speaker. In 1783 and 1784 and the early sessions of the sixth Assembly Uniacke, a pre-loyalist, had been the most prominent member. The resignation of Blowers, his rival in the House, had left him in a strong position. It was further strengthened by the growing impression in the House that the Attorney-General, in leaving the House to accept a seat in the Council at this time, had deserted his principles. The official silence of the Assembly as to the Council's "verdict" had not extended to individual members of the House. Before going to England, Sterns and Taylor collected some memorials signed by members, many of whom, Parr said, "did not know what they signed."¹ He described the two lawyers as having "stirred up a seditious factious party against most of the officers of government", and hoped "they will be considered turbulent spirits" in England, as otherwise "If the several officers of government are not supported, a few years may put a period to the British Constitution in this Province."²

With faction and republicanism noised abroad, most of the members of that House that awaited Parr's reply to their address of the previous year had probably very definite opinions about the executive's action. Couching his message in much more diplomatic terms than the Council's blunt pronouncement, Parr reported that he and the Council had proceeded on the enquiry and called on the judges, whose answers "having been Considered together with the several Allegations brought in support of the Charges, I did with the Unanimous Opinion of the Council Agree, that the Charges against the Judges were not supported by the proofs which Accompanied your Address." He added that he had since transmitted the whole proceedings to the Secretary of State, but had not heard from him.³ Although its tone was mild compared with the Council's denunciation, Parr's message was voted satisfactory by a majority of only one. It was the occasion, two days later, of a heated debate, when Isaac Wilkins, loyalist member for Shelburne,

1. Public Record Office, C. O. 217/60, Parr to Sydney, 20 Apr. 1788.

2. *Ibid.*

3. 1789 Journal p. 11, Proceedings of 14th March.

moved for an address asking the Governor to "remove from his presence those Evil and Pernicious Councillors" who had sanctioned "a mode of Trial absurd, unjust and altogether unconstitutional"¹

In that debate most of the "republican" arguments which operated in the impeachment proceedings of 1790 were advanced. The proposal to remove the councillors aroused a storm of protest. Chief among the dissentients was Capt. Alexander Howe, pre-loyalist member for Annapolis, who declared "that it went to a dissolving of one branch of the legislature, and he really thought we might as well apply to the governor and request him to dissolve the whole legislature. He thought that the present motion tended to Rebellion". In reply to this imputation of disloyalty, Wilkins objected to the word "Rebellion", and distinguished between dissolving the council as a branch of the assembly and suspending or dismissing them as privy councillors. He said "that he had ever lamented it as an unfortunate part of our constitution, that the office of legislative and privy Council were so intimately blended together. But the power of the governor to suspend them at pleasure, and again to appoint, *pro tempore*, others in their stead, removed in a great measure the inconvenience,"¹ and in this instance rendered the conduct of the House perfectly consistent and constitutional. Wilkins compared the action of the Council to that of admitting the acquittal of a prisoner solely on his own plea of not guilty. Barclay seconded the motion for asking for the removal of the councillors and "begged the House to consider themselves as representing the aggregate of the community". "They were the guardians of their rights and liberties. As such, in this province, they could only have their peers, not their superiors. . . . they had an undoubted right to scan, not only the conduct of his Excellency's Privy council, but even the governor's also. True it was, that the King could do no wrong, but it did not follow. . . . that his representative was equally perfect. By this remark he by no means intended to find fault with the conduct of his Excellency. What he had done was dictated by his Privy Council, and they alone were and ought to be answerable for that advice."² Although the trend of the argument was the same, the recorded debates of the next year, when the judges' case came to a head, cannot match these speeches for advanced political thinking.

With the conduct of Blowers, the late Speaker and a fellow-loyalist, Barclay had much fault to find. He censured him severely "for having tacitly sanctioned the proceedings of the House in the

1. Quoted by B Murdoch, op. cit. pp. 70, 71.

2. Quoted by Murdoch, op. cit pp. 67-69, from the *Weekly Chronicle*, of 21 March 1789.

last session, and now taking distinct part on the contrary side.¹ Although censorious of Blowers's *volte face*, Barclay could give no adequate explanation of it. There was, however, an illuminating explanation given, and that by a person far less prejudiced than Barclay. Chief Justice Strange, who was sworn into office in May 1790, wrote it privately to the Under-Secretary of the Home Department when he was about to leave the province. Since it throws light on the judges' case as well as Blowers's motives, it is worth quoting. Discussing the changes which his resignation would make in the provincial law establishment, Strange suggested that Blowers might succeed him as Chief Justice, giving as his reasons first, that Blowers was "very capable of the situation", and secondly "that I conceive he thinks himself entitled to it." Strange went on: "To explain this, it is necessary for you to be informed that when, some time previous to my connection with the province, its two puisne judges were proposed to be impeached, Mr. Blowers took a decided part in their favour, exerting himself in their vindication. From the principle upon which the prosecution was supposed to be instituted, the vindication of those gentlemen was considered as the cause of government; and the office of Chief Justice being at the time vacant, if the prospect of succeeding to it was not the Attorney-General's motive upon the occasion, he at least drew from the zeal with which he endeavoured to maintain their innocence, as opposed to by far the greater part of the profession including the Solicitor-General, an apparently well-founded hope of being recommended by the then Governor Parr to preside in that court, the authority of which he had been at pains to defend."²

It is clear from Strange's letter that if Blowers had an axe to grind in defending the judges, so had the Council as a whole. His statement that the judges' vindication was considered "as the cause of government", indicates that the whole matter had been converted into terms of "rights", the House demanding a fair trial of the judges, and the Council denying both the criminality of the judges and the right of the House to bring their conduct into question. The Council's stand was that, apart from the merits or demerits of the judges, it was in the interests of the prerogative that they be defended from attack. They had therefore accepted the judges' replies to the complaints at their face value and published a forceful denial of their guilt, and had thereby laid themselves open to a charge of partiality. Yet, as Barclay rhetorically demanded: "How could the council possibly declare the information

1. Quoted by Murdoch, *op. cit.* pp. 67-69, from the *Weekly Chronicle*, of 21 March, 1789.
 2. Public Record Office, C. O. 217/37, Strange to King, 5 Apr. 1797

...scandalous and groundless? Could the simple answer of the justices justify so harsh a decision? If their answer could legally be admitted as evidence of their innocence, justice was at an end, and every species of villainy might pass unnoticed. In vain he implored the members not "to entail infamy on their posterity."¹ With a majority against further action in the House, the crusaders for justice could do nothing.

Failing to continue action against the judges, the House turned to other interests. But the apple of discord had been cast. The Council's disregard of the Assembly's demands respecting the judges was the first act in a two years' contest between the two Houses for what they deemed their constitutional rights. A comparison of the Assembly's reception of the Council's amendments to money bills in 1786 and 1789 illustrates the change in their relations. So agreeable had they been in 1786 that the Council relinquished its amendments to a revenue bill when the House objected to them,² while the House actually passed the appropriation bill complete with the Council's amendments.³ But in 1789, declaring that "it is the inherent right of this House to Originate all Money Bills and that they cannot admit of any Amendments to be made therein by the Council", the Assembly threw under the Table a revenue bill which the Council had amended. However, during the session, which lasted about a month, relations between House and Council were not generally acrimonious. After the first heated debates were over, the House did not indulge in recriminations against their opponents. On the contrary, they even passed an act confirming their customary salaries to the puisne justices,⁵ and their achievements towards restoring the provincial credit, establishing election regulations, founding a college and reforming the revenue collection were substantial.

Although productive, the 1789 session closed with the controversy on constitutional rights in mid-air. The Assembly's activity at that time proved to be a mere promise of what it could do. Its abilities came fully into play the next year, when the case of the judges and the controversy over money bills led to the emission of the "sparks of liberty" which are the subject at hand. During the recess the case for the prosecution had been strengthened by the return of Sterns and one of the Assembly members from England. Both were anxious to proceed further against the justices, and far from loath to express their views. Further confirmation of their cause lay in the fact that, although nearly two years had elapsed

1. Murdoch, *op. cit.* p. 70

2. 1786 Journal pp. 44, 45, 48, 49. 3. *Ibid.* p. 54 4. *Ibid.* p. 45.

5. 19 George III cap. 12 in MSS. Acts of N. S.

since Parr sent his report of the Council's "trial" to England, the Secretary of State had not as yet sealed the proceedings with his approval. The confidence of the prosecuting party tended to increase with the lapse of time. They could now advance the view that "the government at home, knowing that we had the means of redress in our own power, would not interpose."¹ The doubt "whether His Majesty would ever manifest either his assent to or disapprobation of those proceedings" became a certainty which Sterns and friends interpreted as leaving "the subject open for the investigation and prosecution of the province at large."² These considerations and the fact that, as one of the members said, the province at large was in a most disagreeable situation, a part of it having "manifested their disapprobation of the conduct of the judges, whilst others were vindicating of them",³ were apparently responsible for the Assembly's changed attitude. In 1789 the Council's proceedings were declared satisfactory by a vote of fifteen to fourteen. The next year the vote stood seventeen to ten for their repudiation and the impeachment of the judges.⁴

In the impeachment proceedings of 1790 most of the arguments of the previous session, sharpened by time and repetition, were again brought forward.⁵ With a majority for prosecution, Parr wrote, the matter of the judges was "thrown into the shape of a formal impeachment by the Commons of Nova Scotia as they stile themselves. The House went through the enquiry with all the form of a Court of Judicature. . . a Serjeant-at-arms was appointed and witnesses summoned and sworn in the House to give evidence, then examined and cross-examined with all the formality of Trial, in the Presence of almost half the town who were admitted by tickets."⁶ Major Barclay was the prosecuting attorney. Having found evidence to sustain 10 of the thirteen charges, the House impeached the judges for "High Crimes and Misdemeanours", and addressed the King, asking that they be given a regular trial.⁷ When they asked the Lt.-Governor to suspend the judges until after the trial, Parr took the Council's advice and refused. The proceedings, like those of the Council in 1788, were transmitted to the Home Government. Unlike the Council's papers, they elicited

1. The Nova Scotian Magazine for 1790 p. 384. 2. Ibid p. 305.

3. Ibid. p. 304.

4. This majority of 7, which decided that the House should impeach the judges, was the result of both accident and design. Of the 15 members who were against the prosecuting party in 1789, 2 (Capt. Howe and Cochrane) did not attend the 1790 session, one (Dickson) had not arrived when the vote was taken, and 2 (Wollenhaupt and Sherlock) went over to the other side, leaving only 10. Those who stood for prosecution thus gained 2, and although they lost 4 (Tonge, Leckie, Putnam and James) by non-attendance, these places were more than filled by 5 (McElhinney, Perkins, Delancey, Lawrence and White) who had not sat in 1789.

5. See Nova Scotia Magazine for debates of part of the session.

6. Public Record Office, CO. 217/62, to Grenville, 29 Apr. 1790.

7. P. A. N. S. Vol. 302 doc. 38 Draft of 13 articles of impeachment.

action. In October the King ordered the Privy Council to consider the whole matter and, in the Spring of 1792, after many delays, the case was heard. Meanwhile the crisis in the province had passed.

It has already been indicated that the impeachment proceedings account only in part for the "sparks of liberty" credited to the 1790 session of the Assembly. Although maintained by those concerned in it, as the rock upon which the power of the Assembly would stand or fall,¹ the impeachment was less interesting and less important to the majority of the House than their rights relative to money bills. There had been difficulties between House and Council in 1789 over the appropriation bill: the Council had objected to including in it clauses providing for the funding of the public debt, on the grounds that the plan covered more than a year.² Eliciting from the House nothing more satisfactory than a declaration "that it is the inherent right of the House to Originate all Money Bills and that they cannot admit of amendments to be made therein by the Council," the upper House capitulated and the Assembly's bill passed. The next year, while the charges against the judges were being examined, a similar contest took place. On the House sending up two bills for providing a revenue, the Council objected to certain additional impost duties, and to the American trade bill being included in the act continuing the revenue laws. They amended the bills, to have the House refuse them. Early in the afternoon of the day the revenue laws would expire, the House sent word to the Council that they had no business before them and would adjourn, if none came. The Council responded by sending down, not the bills the Assembly had framed, but their own bill for continuing the revenue laws. At ten minutes past three the messenger presented the Council's bill; when the House returned it eight minutes later, the Council had adjourned.³ In this way the revenue laws lapsed. Subsequently both Council and House petitioned the Governor to uphold the rights of each. Parr, in hopes of healing the breach, formally recognized the sole right of the House to initiate and amend money bills, but urged that the American trade law and the new import duties be formed into a separate bill.⁴ The House disregarded the Governor's advice, and once more sent up the revenue bills in the same form. Thus forced to pass them or deprive the province of its revenue, the Council capitulated. The upper House was now in no mood to make further concessions. When the House provided in the

1. Ibid. doc. 49 Letter from the Assembly's lawyer, 11 Aug. 1792.

2. 1789 Journal p. 79 Message from Council, followed by 2 conferences.

3. 1790 Journal p. 90.

4. Ibid. pp. 97, 98.

appropriation bill for a change in the management of the Sambro lighthouse, the Council rejected the bill. Persisting in their line of action, the House sent up a second appropriation bill from which the lighthouse keeper's salary was omitted. The Council, "judging that a better time could not offer to stop a growing evil", refused to pass the £650 "salary" for the Assembly members.¹ This amendment to a money bill was rejected by the House on constitutional grounds, and in the deadlock that followed the overlong session ended. Thus, although assured of a revenue, the provincial government had no power to expend it during the ensuing year.

The embarrassment of the executive resulting from the non-passage of the appropriation bill was increased by the shaky state of the provincial credit. Between 1785 and 1789 the provincial debt had increased from £7850 to nearly £14,000. The Speaker of the House attributed the increase to the extraordinary expenses attending the settlement of the loyalists. "Indeed", he wrote, "when I consider the prodigious number of People who removed from New York making it absolutely necessary to go to many heavy expenses in Roads and various public works, Bounties, Premiums and a variety of other purposes, I am surprised to think we have got through as well as we have done."² References to the deranged state of the public finances³ and "the late scandalous administration of its revenues",⁴ however, indicate that expenses attending the settlement account only in part for provincial insolvency. What proportion lay at the door of inefficient or dishonest officials can only be conjectured.⁴ It was the mounting public debt and consequent discount on provincial warrants that impelled certain changes made in the revenue laws in 1789 and 1790.⁵ But the effect of these measures, funding the debt and increasing duties, was not immediate, the debt continued to mount, and further measures had to be taken in 1789 and 1792. Their ultimate success is not a part of this story. The fact that they were necessary explains the chastened mood of the Council in 1791, when it received the appropriation bill it had rejected the preceding year and passed it, intact. The Council's recognition of the sole right of the House to frame and amend money bills was confirmed in later sessions. Throughout the nineties and afterwards, any suggestion from the Council

1. Public Record Office, C. O. 217/62, p. 145, N. S. Council to the Sec'y of State, 4 May 1790.

2. P. A. N. S. Vol. 302 no. 20, Uniacke to the provincial Agent, 16 Aug. 1791.

3. Observer's letter of 20 July, 1790. 4. C. O. 217/63 Strange to Dundas, 10 Mar. 1792.

4. Dishonesty, if it existed, was carefully concealed in the public accounts. The House tried quite assiduously to wipe out inefficiency, which seems to have been common: see demands for prosecution of delinquent officials and for the appointment of efficient ones, throughout the Journals from 1785 to 1792.

5. In the Appropriation act and American Trade act of 1789, and the revenue acts of 1790.

implying an ability to initiate or amend money bills was firmly and successfully met with a declaration of the exclusive rights of the representatives.

The sequel to the judges' case was not so satisfactory to the House. Their success in demanding a hearing in England was offset first by the long delay before the case was heard, and secondly by the unsatisfactory decision on it. Owing to postponements, allowing time for the judges to send fresh answers to the charges and additional evidence, the hearing was not begun until February 1792, and the decision was withheld until August. The hearing, as reported by the Assembly's special agent, promised at least a censure of the judges. He wrote: "The Attorney-General opened the defence, which only consisted in vindicating the Judges from any intention of Corruption, but admitted their total ignorance—said perhaps it was with them as with the Country Justices of the Peace in England, who first opened a Law Book with their Commissions."¹ In spite of this beginning, the Committee of the Privy Council finally announced itself as being "humbly of Opinion that Justice has been impartially Administered by these Judges during the time they have presided in the Supreme Court."²

In giving their decision, the Lords of the Privy Council distinguished between "Errors in Judgment and ignorance. . . . and again between gross and general ignorance, and the want of knowledge on one or more points", and admitted that "in two or three instances the Judges may have mistaken the Law." They excused the mistakes not only on the grounds of human frailty, but because circumstances in the colonies did not invite lawyers "of equal knowledge with those bred to the profession in this Country" in sufficient numbers to supply the Bar and fill the Bench. Apparently unaware that they were confirming the Assembly's contention that the judges were ignorant, the Privy Councillors continued: "And tho' Your Majesty is careful to provide some person of superior knowledge to preside in those Courts as Chief Justice; yet you are often obliged to fill up the Commission with mere laymen, who if they are men of understanding, may be useful as assistant Judges in matters that are not involved in legal difficulty, and as to all such points the Chief Justice gives the Rule." The Committee took no notice of the conditions which prevailed in Nova Scotia, where one of these "mere laymen" had become Acting Chief Justice. There, no matter how deeply "involved in legal difficulty" the cases on trial in the Supreme Court might be, there was for over four years no "person of superior knowledge" to give the rule. It was

1. P. A. N. S. Vol. 302, no. 20, Lawrence to the Speaker, 18 Feb. 1792.

2. Vol. 302 no. 50, Copy of Report of Privy Council Committee to the King, 1 August, 1792.

after these conditions had prevailed for two years that the judges' conduct was first questioned. Although they may well have been the ultimate cause of all the complaints, these special conditions were not officially taken into account.

The illogical reasoning of the committee on the judges' case was only one of the sources of Nova Scotian dissatisfaction with the decision. It was matched by ignorance both of statistical facts and of colonial law. Both were brought out in the committee's statement, which they used to prove the judges' impartiality, that only one appeal had been made from the Nova Scotia Supreme Court in ten years. The statement was incorrect: reference to the Privy Council Register shows that there were three in the eight years after 1782. Even if there had been only one, or none, it would not have proved that the judges were impartial, for, as the Nova Scotian agent for the prosecution said, "They (the Committee) should know that an action *under £300 stg. cannot be removed* for appeal, and they might know that scarcely a Suitor in 300 is able to appeal."¹ However dissatisfied the House may have been with the Privy Council's verdict, it took no further action against the judges. The events of the two years between the impeachment and the hearing tended to push the whole matter into the background. Before the decision was announced to Nova Scotians, a new Governor had taken office in the province and a new House was about to be elected.² Moreover, the conditions in the Supreme Court were altered, shortly after the House rose in 1790, by the arrival of a new Chief Justice. After Strange was appointed to preside over it, the need for reforming the Court from the outside steadily declined. By the time all the papers concerning the case had arrived in Nova Scotia, the French revolutionary war had begun and the province was in the throes of preparing for invasion, which for four years was almost hourly expected. When that danger subsided, the case of the judges had faded into history. In spite of the Privy Council decision, the prestige of the House does not appear to have suffered from its attempt to oust the judges. The fact that the House succeeded in their demand for a hearing, if not in removing the judges, may be one explanation. The Council, it will be remembered, were unable to elicit either action or opinion from the Home Government. Moreover, whether due to the investigation or not, the province had acquired an able Chief Justice at an important moment, and the inference was obviously to the glory of the House. A good many people, including the new head of the Court, still held that "the exigencies of the

1. P. A. N. S. Vol. 302 no. 49, Lawrence to Speaker, 11 Aug. 1792.

2. In May 1792 Gov. Wentworth succeeded Parr, who died in Nov. 1791, and the House was dissolved the following summer.

province" had demanded a change "upon the Bench."¹ If the House had been within its rights in trying to effect a change, it should not be blamed for a failure which it had no means of preventing. Certainly the constitutional efforts of the House, however regretted by the Council and their friends, had left it a strong position. In the Spring of 1793 the President of the Council wrote the following reproof to the Agent of the province in London: "They (the Council) take occasion to observe that from the time when you had reason to suppose all power to be centring with that House, you have ceased to correspond or take any notice of them."² So frank an admission by the Council of their own inferior position makes it likely that Nova Scotians generally held the Council in less esteem than the House.

The fact that the constitutional struggle which the House carried on against the Council was led by loyalists seems to have escaped *Observer*. Perhaps, being a loyalist, he would not cite loyalism as the cause of their contumely. On the strength of their supposed imperialistic views, loyalists might have been expected to be conservative, if not reactionary. But they were primarily individuals; and individuals, except under stress, usually follow their own interests. As the later history of the province was to show, those loyalists who attained positions of influence were conservative and became reactionary. In that they were like non-loyalists in the same circumstances. Those who remained outside the charmed circle of power were no more or less conservative than pre-loyalists. The loyalists who led the attack against the judges and later against the Council were at the moment of the extra-official class. Possibly their motives were mixed. But whether or not they hoped to displace certain office-holders, including the judges, certainly they were following the interests and receiving the support of a majority in the Assembly and a large number out of it. Their leadership may be explained by the fact that they were generally men of better education and wider experience than the other Assembly members, and that they came from colonies much further advanced in self-government and in efficient administration than Nova Scotia. The backward state of the province in these respects was a challenge which, when they were reasonably sure of support, they were only too glad to meet. Following the path of investigation and reform pointed by Uniacke and the other pre-loyalists in the early sessions, they broached the subject of the maladministration of justice.

1. Public Record Office, C. O. 217/63 p. 423, Strange to Sec'y of State Dundas, 10 Mar. 1792: "The Object of the impeachment and the exigencies of the province in that respect will be fully satisfied, if . . . a change is effected upon the Bench." He suggested that Deschamps be pensioned off.

Pub. Record Office C. O. 217/64 p. 471 Strange to Cumberland, 28 Apr./93.

When it led to a battle with the Council over constitutional rights, they stuck to their guns and the House gave its unanimous support.

In the two parties which fought the battle of 1790 the political rivals of the ensuing twenty years were foreshadowed. On the one side was the pro-Council party, who supported the government and believed they were protecting the prerogative. *Observer*, who conjured up "sparks of liberty" to warn the unwary of the dangers of the Assembly's course, belonged to this party. Their conception of the powers of a colonial government is concisely expressed in the following paragraph by *Observer*:

A Provincial Government is, in Fact, nothing more than a Corporation, instituted thro' the Courtesy of the King, for the Convenience of His Subjects, settling in remote parts of the Empire, and to whom, thro' the paternal and benignant exercise of His Prerogatives, he extends, by Charter, or otherwise, such essential Rights as are applicable to Colonial Establishments.¹

Their ultimate authority was the Royal Instructions.² How inelastic and inadequate these were for guidance in carrying on government, may be gathered from an extract of a letter by Lord George Germain to the Governor of Barbados:

I . . . heartily wish more attention was given to review and amend the Instructions, upon every new Appointment. . . . It too often happens. . . . that the same Instruction which was given half a Century ago is carelessly copied over without variation to the present time, notwithstanding changes which have taken place in the Government.³

In a royal province like Nova Scotia, the whole of the Governor's directions were contained in the royal commission and instructions and whatever was received in correspondence with the Home Department. To commission and instructions, however obsolete, he and the Council continued to revert, as the source of their power, for the definition of their rights and for authority for their acts. To quote only a few instances of reversion to this authority: in 1799 the Council again declared their right to frame money bills;⁵ in 1808 Gov. Wentworth, supported by the Council, claimed as the King's (and therefore his) prerogative the final determination of contested elections, a privilege long exercised by the House,⁴ while Administrator Croke went to a length unknown in English parliament-

1. *Royal Gazette*, 22 Jun 1790, Letter from *Observer*.

2. Pub. Record Office C. O. 217/62 p. 145, Council To Sec'y of State, 4 May 1790, defending their assertion of rights re money bills on the ground that the Royal Instructions of 1756 allow it.

3. *Ibid.* C. O. 29/27, Germain to Cunningham, 16 Nov. 1780, quoted by H. T. Manning in *British Colonial Government after the American Revolution*. p. 86, footnote 29.

4. 1799 Journal p. 344, Message from Council to House.

5. P. A. N. S. Vol. 139, pp. 23-25, Prov. Sec'y to Attorney-Gen'l, 6 Sept. 1805, declaring the issuing of writs the King's prerogative, and 1807-8 Assembly Journal p. 49 Wentworth's message to the House, 9 Jan. 1808, claiming the right to determine contested elections.

ary history when he vetoed the 1809 appropriation bill.¹ The unfavourable pronouncements of the Home Government on the last two points reprovved sharply such literal and antiquated interpretations of the instructions.

Opposed to the upholders of the provincial government was the anti-Council or Assembly party. Although not the "republicans" their enemies pronounced them, they quoted no obsolete authority. Theirs went as far in advance of practice as the Council's party went backward. The ultimate resort of the Assembly party was to the privileges and powers of the British House of Commons. Without realizing many of the constitutional implications, they took Parliament for their model in all things. Its practice was their authority for impeaching the judges, regulating elections, claiming exclusive rights in fiscal legislation, and defending themselves against all opposing claims in the twenty-five years that followed. The analogy between the English Commons and the Nova Scotian House Assembly, on which they based their claims, was categorically denied by their opponents, whose spokesman of 1790 expressed their denial thus:

"So far as may be necessary to preserve Order and Method in the Arrangement of Public Business, the House of Commons in Great Britain afford the most perfect Model for the Imitation of the Assembly; but *without assuming Rights, that can neither be inherent or implied in the Nature of our Provincial Settlement, and which will never apply*, for Reasons too forcible and obvious to admit of Contradiction from those who are attached to the Constitution of the Parent State."²

Though closer to the truth than this poor prophet, the Assembly party that looked up to the Commons as a model can hardly have envisaged the kind of responsible colonial government that was established in Nova Scotia in 1848 as the completion of their analogy. They had no such well-rounded aim, but rather a desire to establish the somewhat vague historic rights of Englishmen in America. As part of the American interpretation of the British colonial constitution, that conception had characterized most Americans before the Revolution. Strong indications of it are also to be found in the petition of the Nova Scotian Assembly to the King in 1775.³ Unquestionably it continued to inspire certain Nova Scotian inhabitants and Assembly members even unto the perfect day of responsible government. Thus the constitutional struggle of the sixth Assembly and its "sparks of liberty" resolve into faint, far-off glimmerings of the true dawn.

1. N. S. Historical Society Collections Vol. II, *Sir Alexander Croke* by Adams Archibald contains a discussion of the constitutional implications of Croke's action.

2. Royal Gazette, Observer's letter, 22 Jun. 1790. Italics my own.

3. J. B. Brebner: *Nova Scotia's Remedy for the American Revolution*, editing the petition. Canadian Historical Review, June 1934 pp. 174 ff.